

32B-1-101. Title.

- (1) This title is known as the "Alcoholic Beverage Control Act."
- (2) This chapter is known as "Alcoholic Beverage Control General Provisions."

Enacted by Chapter 276, 2010 General Session

32B-1-102. Definitions.

As used in this title:

- (1) "Airport lounge" means a business location:
 - (a) at which an alcoholic product is sold at retail for consumption on the premises; and
 - (b) that is located at an international airport with a United States Customs office on the premises of the international airport.
- (2) "Airport lounge license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 5, Airport Lounge License.
- (3) "Alcoholic beverage" means the following:
 - (a) beer; or
 - (b) liquor.
- (4) (a) "Alcoholic product" means a product that:
 - (i) contains at least .5% of alcohol by volume; and
 - (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.
 - (b) "Alcoholic product" includes an alcoholic beverage.
 - (c) "Alcoholic product" does not include any of the following common items that otherwise come within the definition of an alcoholic product:
 - (i) except as provided in Subsection (4)(d), an extract;
 - (ii) vinegar;
 - (iii) cider;
 - (iv) essence;
 - (v) tincture;
 - (vi) food preparation; or
 - (vii) an over-the-counter medicine.
 - (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.
- (5) "Alcohol training and education seminar" means a seminar that is:
 - (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
 - (b) described in Section 62A-15-401.
- (6) "Banquet" means an event:
 - (a) that is held at one or more designated locations approved by the commission in or on the premises of a:
 - (i) hotel;
 - (ii) resort facility;
 - (iii) sports center; or
 - (iv) convention center;
 - (b) for which there is a contract:

(i) between a person operating a facility listed in Subsection (6)(a) and another person; and

(ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and

(c) at which food and alcoholic products may be sold, offered for sale, or furnished.

(7) (a) "Bar" means a surface or structure:

(i) at which an alcoholic product is:

(A) stored; or

(B) dispensed; or

(ii) from which an alcoholic product is served.

(b) "Bar structure" means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:

(i) stored; or

(ii) dispensed.

(8) (a) Subject to Subsection (8)(d), "beer" means a product that:

(i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Beer" may or may not contain hops or other vegetable products.

(c) "Beer" includes a product that:

(i) contains alcohol in the percentages described in Subsection (8)(a); and

(ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

(d) "Beer" does not include a flavored malt beverage.

(9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

(10) "Beer retailer" means a business:

(a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) to whom a license is issued:

(i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or

(ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.

(11) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.

(12) "Billboard" means a public display used to advertise, including:

(a) a light device;

- (b) a painting;
 - (c) a drawing;
 - (d) a poster;
 - (e) a sign;
 - (f) a signboard; or
 - (g) a scoreboard.
- (13) "Brewer" means a person engaged in manufacturing:
- (a) beer;
 - (b) heavy beer; or
 - (c) a flavored malt beverage.
- (14) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.
- (15) "Certificate of approval" means a certificate of approval obtained from the department under Section 32B-11-201.
- (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:
- (a) under a single contract;
 - (b) at a fixed charge in accordance with the bus company's tariff; and
 - (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.
- (17) "Church" means a building:
- (a) set apart for worship;
 - (b) in which religious services are held;
 - (c) with which clergy is associated; and
 - (d) that is tax exempt under the laws of this state.
- (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License.
- (b) "Club license" includes:
- (i) a dining club license;
 - (ii) an equity club license;
 - (iii) a fraternal club license; or
 - (iv) a social club license.
- (19) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.
- (20) "Commissioner" means a member of the commission.
- (21) "Community location" means:
- (a) a public or private school;
 - (b) a church;
 - (c) a public library;
 - (d) a public playground; or
 - (e) a public park.
- (22) "Community location governing authority" means:
- (a) the governing body of the community location; or
 - (b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the

community location the authority to prohibit an activity at the community location.

(23) "Container" means a receptacle that contains an alcoholic product, including:

- (a) a bottle;
- (b) a vessel; or
- (c) a similar item.

(24) "Convention center" means a facility that is:

- (a) in total at least 30,000 square feet; and
- (b) otherwise defined as a "convention center" by the commission by rule.

(25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

(b) "Counter" does not include a surface or structure if on or at any point of the surface or structure an alcoholic product is:

- (i) stored; or
- (ii) dispensed.

(26) "Department" means the Department of Alcoholic Beverage Control created in Section 32B-2-203.

(27) "Department compliance officer" means an individual who is:

- (a) an auditor or inspector; and
- (b) employed by the department.

(28) "Department sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling.

(29) "Dining club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a dining club license.

(30) "Director," unless the context requires otherwise, means the director of the department.

(31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this title:

- (a) against a person subject to administrative action; and
- (b) that is brought on the basis of a violation of this title.

(32) (a) Subject to Subsection (32)(b), "dispense" means:

(i) drawing of an alcoholic product:

(A) from an area where it is stored; or

(B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

(ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection (32) applies only to:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a reception center license; and
- (iv) a beer-only restaurant license.

(33) "Distillery manufacturing license" means a license issued in accordance

with Chapter 11, Part 4, Distillery Manufacturing License.

(34) "Distressed merchandise" means an alcoholic product in the possession of the department that is saleable, but for some reason is unappealing to the public.

(35) "Educational facility" includes:

- (a) a nursery school;
- (b) an infant day care center; and
- (c) a trade and technical school.

(36) "Equity club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an equity club license.

(37) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

(38) "Exempt license" means a license exempt under Section 32B-1-201 from being considered in determining the total number of a retail license that the commission may issue at any time.

(39) (a) "Flavored malt beverage" means a beverage:

- (i) that contains at least .5% alcohol by volume;
- (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;
- (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and
- (iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

(40) "Fraternal club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a fraternal club license.

(41) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

(42) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

- (i) serve;
- (ii) deliver; or
- (iii) otherwise make available.

(43) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

(44) "Health care practitioner" means:

- (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

- (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;
- (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;
- (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;
- (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;
- (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
- (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and
- (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

(45) (a) "Heavy beer" means a product that:

- (i) contains more than 4% alcohol by volume; and
 - (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- (b) "Heavy beer" is considered liquor for the purposes of this title.

(46) "Hotel" is as defined by the commission by rule.

(47) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

(48) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.

(49) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.

(50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:

- (a) law; or
- (b) court order.

(51) "Intoxicated" means that a person:

- (a) is significantly impaired as to the person's mental or physical functions as a result of the use of:
 - (i) an alcoholic product;
 - (ii) a controlled substance;
 - (iii) a substance having the property of releasing toxic vapors; or
 - (iv) a combination of Subsections (51)(a)(i) through (iii); and
- (b) exhibits plain and easily observed outward manifestations of behavior or

physical signs produced by the over consumption of an alcoholic product.

(52) "Investigator" means an individual who is:

- (a) a department compliance officer; or
- (b) a nondepartment enforcement officer.

(53) "Invitee" is as defined in Section 32B-8-102.

(54) "License" means:

- (a) a retail license;
- (b) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;
- (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act; or
- (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

(55) "Licensee" means a person who holds a license.

(56) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

(57) "Limousine" means a motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

- (a) in which the driver and a passenger are separated by a partition, glass, or other barrier;
- (b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and
- (c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

(58) (a) (i) "Liquor" means a liquid that:

(A) is:

- (I) alcohol;
- (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
- (III) a combination of liquids a part of which is spirituous, vinous, or fermented;

or

(IV) other drink or drinkable liquid; and

(B) (I) contains at least .5% alcohol by volume; and

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

- (A) heavy beer;
- (B) wine; and
- (C) a flavored malt beverage.

(b) "Liquor" does not include beer.

(59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

(60) "Liquor warehousing license" means a license that is issued:

- (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- (b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

(61) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county; or

(b) for premises that are located in an incorporated city or a town, the governing body of the city or town.

(62) "Lounge or bar area" is as defined by rule made by the commission.

(63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(64) "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.

(65) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

(i) (A) under the control of the United States Department of Defense; or

(B) of the National Guard;

(ii) that is located within the state; and

(iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

(i) civil works;

(ii) a rivers and harbors project; or

(iii) a flood control project.

(66) "Minor" means an individual under the age of 21 years.

(67) "Nondepartment enforcement agency" means an agency that:

(a) (i) is a state agency other than the department; or

(ii) is an agency of a county, city, or town; and

(b) has a responsibility to enforce one or more provisions of this title.

(68) "Nondepartment enforcement officer" means an individual who is:

(a) a peace officer, examiner, or investigator; and

(b) employed by a nondepartment enforcement agency.

(69) (a) "Off-premise beer retailer" means a beer retailer who is:

(i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; and

(ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(70) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

(71) "On-premise beer retailer" means a beer retailer who is:

(a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:

(i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and

(ii) on and after March 1, 2012, operating:

(A) as a tavern; or

(B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

(72) "Opaque" means impenetrable to sight.

(73) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

(ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

(74) "Package agent" means a person who holds a package agency.

(75) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:

(a) a customer;

(b) a member;

(c) a guest;

(d) an attendee of a banquet or event;

(e) an individual who receives room service;

(f) a resident of a resort;

(g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102; or

(h) an invitee.

(76) "Permittee" means a person issued a permit under:

(a) Chapter 9, Event Permit Act; or

(b) Chapter 10, Special Use Permit Act.

(77) "Person subject to administrative action" means:

(a) a licensee;

(b) a permittee;

(c) a manufacturer;

(d) a supplier;

(e) an importer;

(f) one of the following holding a certificate of approval:

(i) an out-of-state brewer;

(ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

(iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or

(g) staff of:

(i) a person listed in Subsections (77)(a) through (f); or

(ii) a package agent.

(78) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

(79) "Prescription" means an order issued by a health care practitioner when:

(a) the health care practitioner is licensed under Title 58, Occupations and Professions, to prescribe a controlled substance, other drug, or device for medicinal purposes;

(b) the order is made in the course of that health care practitioner's professional practice; and

(c) the order is made for obtaining an alcoholic product for medicinal purposes only.

(80) (a) "Private event" means a specific social, business, or recreational event:

(i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

(81) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

(A) is substantially similar to an identification card;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

(I) under Title 53, Chapter 3, Uniform Driver License Act; or

(II) in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(82) (a) "Public building" means a building or permanent structure that is:

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;

(B) transacting public business; or

(C) regularly conducting government activities.

(b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

(83) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation, including an airline, railroad, bus, boat, or other public conveyance.

(84) "Reception center" means a business that:

(a) operates facilities that are at least 5,000 square feet; and

(b) has as its primary purpose the leasing of the facilities described in

Subsection (84)(a) to a third party for the third party's event.

(85) "Reception center license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 8, Reception Center License.

(86) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or
(ii) stored in an electronic or other medium and is retrievable in a perceivable form.

(b) "Record" includes:

(i) a book;
(ii) a book of account;
(iii) a paper;
(iv) a contract;
(v) an agreement;
(vi) a document; or
(vii) a recording in any medium.

(87) "Residence" means a person's principal place of abode within Utah.

(88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

(89) "Resort" is as defined in Section 32B-8-102.

(90) "Resort facility" is as defined by the commission by rule.

(91) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

(92) "Restaurant" means a business location:

(a) at which a variety of foods are prepared;
(b) at which complete meals are served to the general public; and
(c) that is engaged primarily in serving meals to the general public.

(93) "Retail license" means one of the following licenses issued under this title:

(a) a full-service restaurant license;
(b) a master full-service restaurant license;
(c) a limited-service restaurant license;
(d) a master limited-service restaurant license;
(e) a club license;
(f) an airport lounge license;
(g) an on-premise banquet license;
(h) an on-premise beer license;
(i) a reception center license; or
(j) a beer-only restaurant license.

(94) "Room service" means furnishing an alcoholic product to a person in a guest room of a:

(a) hotel; or
(b) resort facility.

(95) "Serve" means to place an alcoholic product before an individual.

(96) (a) "School" means a building used primarily for the general education of minors.

(b) "School" does not include an educational facility.

(97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred,

solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

(98) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:

- (a) for the entertainment of one or more patrons;
- (b) on the premises of:
 - (i) a social club licensee; or
 - (ii) a tavern;
- (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
- (d) on a contractual or voluntary basis; and
- (e) whether or not the person is designated as:
 - (i) an employee;
 - (ii) an independent contractor;
 - (iii) an agent of the licensee; or
 - (iv) a different type of classification.

(99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

(100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.

(101) "Social club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a social club license.

(102) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.

(103) (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

(104) "Sports center" is as defined by the commission by rule.

(105) (a) "Staff" means an individual who engages in activity governed by this title:

(i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;

(ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or

(iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.

(b) "Staff" includes:

- (i) an officer;
- (ii) a director;
- (iii) an employee;
- (iv) personnel management;
- (v) an agent of the licensee, including a managing agent;
- (vi) an operator; or
- (vii) a representative.

(106) "State of nudity" means:

- (a) the appearance of:
 - (i) the nipple or areola of a female human breast;
 - (ii) a human genital;
 - (iii) a human pubic area; or
 - (iv) a human anus; or
- (b) a state of dress that fails to opaquely cover:
 - (i) the nipple or areola of a female human breast;
 - (ii) a human genital;
 - (iii) a human pubic area; or
 - (iv) a human anus.

(107) "State of seminudity" means a state of dress in which opaque clothing covers no more than:

- (a) the nipple and areola of the female human breast in a shape and color other than the natural shape and color of the nipple and areola; and
- (b) the human genitals, pubic area, and anus:
 - (i) with no less than the following at its widest point:
 - (A) four inches coverage width in the front of the human body; and
 - (B) five inches coverage width in the back of the human body; and
 - (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

- (108) (a) "State store" means a facility for the sale of packaged liquor:
- (i) located on premises owned or leased by the state; and
 - (ii) operated by a state employee.
- (b) "State store" does not include:
- (i) a package agency;
 - (ii) a licensee; or
 - (iii) a permittee.

(109) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.

(b) "Store" means to place or maintain in a location an alcoholic product from which a person draws to prepare an alcoholic product to be furnished to a patron, except as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii).

(110) "Sublicense" is as defined in Section 32B-8-102.

(111) "Supplier" means a person who sells an alcoholic product to the department.

(112) "Tavern" means an on-premise beer retailer who is:

- (a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and
- (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-premise Beer Retailer License.

(113) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

(114) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

(115) "Translucent" means a substance that allows light to pass through, but does not allow an object or person to be seen through the substance.

(116) "Unsaleable liquor merchandise" means a container that:

(a) is unsaleable because the container is:

(i) unlabeled;

(ii) leaky;

(iii) damaged;

(iv) difficult to open; or

(v) partly filled;

(b) (i) has faded labels or defective caps or corks;

(ii) has contents that are:

(A) cloudy;

(B) spoiled; or

(C) chemically determined to be impure; or

(iii) contains:

(A) sediment; or

(B) a foreign substance; or

(c) is otherwise considered by the department as unfit for sale.

(117) (a) "Wine" means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.

(b) "Wine" is considered liquor for purposes of this title, except as otherwise provided in this title.

(118) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Amended by Chapter 349, 2013 General Session

32B-1-103. Policy.

The policies of the state are as follows:

(1) This title shall be administered in a manner that is nonpartisan and free of partisan political influence.

(2) Alcoholic product control shall be operated as a public business using sound management principles and practices. This public business shall:

(a) be governed by a commission;

(b) be operated by a department; and

(c) function with the intent of servicing the public demand for alcoholic products.

(3) The commission and department may not promote or encourage the sale or consumption of alcoholic products.

(4) The commission shall conduct, license, and regulate the sale of alcoholic products in a manner and at prices that:

(a) reasonably satisfy the public demand and protect the public interest, including the rights of citizens who do not wish to be involved with alcoholic products; and

(b) will promote the reduction of the harmful effects of:

(i) over consumption of alcoholic products by adults; and

- (ii) consumption of alcoholic products by minors.

Enacted by Chapter 276, 2010 General Session

32B-1-104. Exercise of police powers -- Severability.

(1) This title is an exercise of the police powers of the state for the protection of the public health, peace, safety, welfare, and morals, and regulates the storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product. This title governs alcoholic product control unless otherwise provided in this title.

(2) If a provision of this title or the application of a provision to a person or circumstance is held invalid, the remainder of this title shall be given effect without the invalid provision or application. The provisions of this title are severable.

Enacted by Chapter 276, 2010 General Session

32B-1-201. Restrictions on number of retail licenses that may be issued -- Determining population -- Exempt licenses.

(1) As used in this section:

(a) "Alcohol-related law enforcement officer" means a law enforcement officer employed by the Department of Public Safety that has as a primary responsibility:

- (i) the enforcement of this title; or
- (ii) the enforcement of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(b) "Enforcement ratio" is the number calculated as follows:

(i) determine the quotient equal to the sum of the total number of quota retail licenses available and the total number of licensed premises operating under a master full-service restaurant license or under a master limited-service restaurant license divided by the total number of alcohol-related law enforcement officers; and

(ii) round the number determined in accordance with Subsection (1)(b)(i) up to the nearest whole number.

(c) "Quota retail license" means:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a club license;
- (iv) an on-premise banquet license;
- (v) an on-premise beer retailer operating as a tavern; and
- (vi) a reception center license.

(d) "Total number of alcohol-related law enforcement officers" means the total number of positions designated as alcohol-related law enforcement officers that are funded as of a specified date as certified by the Department of Public Safety to the department.

(e) "Total number of quota retail licenses available" means the number calculated by:

(i) determining as of a specified date for each quota retail license the number of licenses that the commission may not exceed calculated by dividing the population of

the state by the number specified in the relevant provision for the quota retail license; and

(ii) adding together the numbers determined under Subsection (1)(e)(i).

(2) (a) Beginning on July 1, 2012, the department shall annually determine the enforcement ratio as of July 1 of that year.

(b) If, beginning on July 1, 2012, the enforcement ratio is greater than 52, the commission may not issue a quota retail license for the 12-month period beginning on the July 1 for which the enforcement ratio is greater than 52.

(c) Notwithstanding Subsection (2)(b), the commission may issue a quota retail license during the 12-month period described in Subsection (2)(b) beginning on the day on which a sufficient number of alcohol-related law enforcement officers are employed so that if the enforcement ratio is calculated, the enforcement ratio would be equal to or less than 52.

(d) Once the Department of Public Safety certifies under Subsection (1)(d) the total number of positions designated as alcohol-related law enforcement officers that are funded as of July 1, the Department of Public Safety may not use the funding for the designated alcohol-related law enforcement officers for a purpose other than funding those positions.

(3) For purposes of determining the number of state stores that the commission may establish or the number of package agencies or retail licenses that the commission may issue, the commission shall determine population by:

(a) the most recent United States decennial or special census; or

(b) another population determination made by the United States or state governments.

(4) The commission may not consider a retail license that meets the following conditions in determining the total number of licenses available for that type of retail license that the commission may issue at any time:

(a) the retail license was issued to a club licensee designated as a dining club as of July 1, 2011; and

(b) the dining club license is converted to another type of retail license in accordance with Section 32B-6-409.

Amended by Chapter 349, 2013 General Session

32B-1-202. Proximity to community location.

(1) For purposes of this section, "outlet" means:

(a) a state store;

(b) a package agency; or

(c) a retail licensee, except an airport lounge licensee.

(2) Except as otherwise provided in this section, the premises of an outlet may not be located:

(a) within 600 feet of a community location, as measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(b) within 200 feet of a community location, measured in a straight line from the nearest entrance of the outlet to the nearest property boundary of the community

location.

(3) With respect to the location of an outlet, the commission may authorize a variance to reduce the proximity requirement of Subsection (2) if:

(a) when the variance reduces the proximity requirement of Subsection (2)(b), the community location at issue is:

(i) a public library; or

(ii) a public park;

(b) except with respect to a state store, the local authority gives its written consent to the variance;

(c) the commission finds that alternative locations for locating that type of outlet in the community are limited;

(d) a public hearing is held in the city, town, or county, and when practical in the neighborhood concerned;

(e) after giving full consideration to the attending circumstances and the policies stated in Subsections 32B-1-103(3) and (4), the commission determines that locating the outlet in that location would not be detrimental to the public health, peace, safety, and welfare of the community;

(f) (i) the community location governing authority gives its written consent to the variance; or

(ii) if the community location governing authority does not give its written consent to a variance, the commission finds the following for a state store, or if the outlet is a package agency or retail licensee, the commission finds that the applicant establishes the following:

(A) there is substantial unmet public demand to consume an alcoholic product:

(I) within the geographic boundary of the local authority in which the outlet is to be located; and

(II) for an outlet that is a retail licensee, in a public setting;

(B) there is no reasonably viable alternative for satisfying the substantial unmet demand other than through locating that type of outlet in that location; and

(C) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the outlet is to be located for locating that type of outlet to satisfy the unmet demand.

(4) With respect to the premises of a package agency or retail licensee that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (2) in considering whether to issue the package agency or same type of retail license to the new owner of the premises if:

(a) the premises previously received a variance reducing the proximity requirement of Subsection (2)(a);

(b) the premises received a variance reducing the proximity requirement of Subsection (2)(b) on or before May 4, 2008; or

(c) a variance from proximity requirements was otherwise allowed under this title.

(5) Nothing in this section prevents the commission from considering the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of an outlet.

Enacted by Chapter 276, 2010 General Session

32B-1-203. Licensee compliance with other laws.

(1) A licensee and a person applying for a license shall comply with the applicable federal and state laws pertaining to payment of taxes and contributions to unemployment and insurance funds to which the licensee or person may be subject.

(2) The commission:

- (a) may not issue a license to a person who violates this section; and
- (b) may suspend, revoke, or not renew the license of a licensee who violates this section.

Amended by Chapter 307, 2011 General Session

32B-1-204. Powers of local authority.

(1) If this title expressly addresses an issue related to alcoholic product control in this state, a local authority may not regulate in relation to that issue except when a local authority is expressly granted regulatory authority to regulate the issue by this title.

(2) If this title does not expressly address an issue related to alcoholic product control, a local authority may regulate that issue if the regulation:

- (a) is of the sale, offer for sale, furnishing, or consumption of an alcoholic product; and
- (b) does not conflict with this title.

Enacted by Chapter 276, 2010 General Session

32B-1-205. Falsifying or taking other actions with records prohibited.

(1) A person required to make or maintain a record under this title or rules of the commission, or a person acting for that person, may not knowingly forge, falsify, alter, cancel, destroy, conceal, or remove the record for the purpose of deceiving the commission, a commissioner, the director, the department, a department employee, or a law enforcement officer.

(2) A violation of this section may result in:

- (a) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, if the person who violates this section is a person subject to administrative action; or
- (b) criminal prosecution if the violation is a criminal offense under Chapter 4, Criminal Offenses and Procedure Act.

Enacted by Chapter 276, 2010 General Session

32B-1-206. Advertising prohibited -- Exceptions.

(1) (a) The department may not advertise liquor, except:

- (i) the department may provide for an appropriate sign in the window or on the front of a state store or package agency denoting that it is a state authorized liquor retail facility;
- (ii) the department or a package agency may provide a printed price list to the

public;

(iii) the department may authorize the use of price posting and floor stacking of liquor within a state store;

(iv) subject to Subsection (1)(b), the department may provide a listing of the address and telephone number of a state store in one or more printed or electronic directories available to the general public; and

(v) subject to Subsection (1)(b), a package agency may provide a listing of its address and telephone number in one or more printed or electronic directories available to the general public.

(b) A listing under Subsection (1)(a)(iv) or (v) in the business or yellow pages of a telephone directory may not be displayed in an advertisement or other promotional format.

(2) (a) The department may not advertise an alcoholic product on a billboard.

(b) A package agency may not advertise an alcoholic product on a billboard, except to the extent allowed by the commission by rule.

(3) (a) The department may not display liquor or a price list in a window or showcase visible to passersby.

(b) A package agency may not display liquor or a price list in a window or showcase visible to passersby, except to the extent allowed by the commission by rule.

(4) Except to the extent prohibited by this title, the advertising of an alcoholic product is allowed under guidelines established by the commission by rule.

(5) The advertising or use of any means or media to offer an alcoholic product to the general public without charge is prohibited.

Renumbered and Amended by Chapter 307, 2011 General Session

32B-1-207. Calculation of ratio of gross receipts of food to alcoholic product.

In calculating the annual gross receipts of a retail license or sublicense for purposes of determining the percentage of gross receipts from the sale, offer for sale, or furnishing of food or an alcoholic product, a retail licensee may not include in the calculation the money from the sale of a bottle of wine by the retail licensee or under a sublicense that is in excess of \$250.

Enacted by Chapter 334, 2011 General Session

32B-1-301. Title.

This part is known as "Qualifications and Background."

Enacted by Chapter 276, 2010 General Session

32B-1-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-1-303. Qualifications related to employment with the department.

(1) The department may not employ a person if that person has been convicted of:

- (a) a felony under a federal law or state law;
- (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (c) a crime involving moral turpitude; or
- (d) on two or more occasions within the five years before the day on which the department employs the person, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.

(2) The director may terminate a department employee or take other disciplinary action consistent with Title 67, Chapter 19, Utah State Personnel Management Act, if:

(a) after the day on which the department employs the department employee, the department employee is found to have been convicted of an offense described in Subsection (1) before being employed by the department; or

(b) on or after the day on which the department employs the department employee, the department employee:

- (i) is convicted of an offense described in Subsection (1)(a), (b), or (c); or
- (ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may immediately suspend a department employee for the period during which a criminal matter is being adjudicated if the department employee:

(a) is arrested on a charge for an offense described in Subsection (1)(a), (b), or (c); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

Enacted by Chapter 276, 2010 General Session

32B-1-304. Qualifications for a package agency, license, or permit -- Minors.

(1) (a) The commission may not issue a package agency, license, or permit to a person who has been convicted of:

- (i) a felony under a federal law or state law;
- (ii) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (iii) a crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the

package agency, license, or permit is issued, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.

(b) If the person is a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of an offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or
- (vii) a member who owns at least 20% of the limited liability company.

(c) The proscription under Subsection (1)(a) applies if a person who is employed to act in a supervisory or managerial capacity for a package agency, licensee, or permittee has been convicted of an offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a package agency, license, or permit, and terminate a package agency agreement, if a person described in Subsection (1):

(a) after the day on which the package agency, license, or permit is issued, is found to have been convicted of an offense described in Subsection (1)(a) before the package agency, license, or permit is issued; or

(b) on or after the day on which the package agency, license, or permit is issued:

- (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
- (ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of the package agency, licensee, or permittee for the period during which a criminal matter is being adjudicated if a person described in Subsection (1):

(a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not issue a package agency, license, or permit to a person who has had any type of agency, license, or permit issued under this title revoked within the last three years.

(ii) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if a partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and

outstanding stock of the corporation, or member who owns at least 20% of the limited liability company is or was:

(A) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of a limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.

(b) The commission may not issue a package agency, licence, or permit to a partnership, corporation, or limited liability company if any of the following had any type of agency, license, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) a partner or managing agent of a partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of a corporation; or

(iii) a manager or member who owns at least 20% of a limited liability company.

(c) The commission may not issue a package agency, license, or permit to a person acting in an individual capacity if that person was:

(i) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or

(iii) a manager or member who owned at least 20% of the limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.

(5) (a) The commission may not issue a package agency, license, or permit to a minor.

(b) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(iii) a manager or member who owns at least 20% of the limited liability company.

(6) If a package agent, licensee, or permittee no longer possesses the qualifications required by this title for obtaining a package agency, license, or permit, the commission may terminate the package agency agreement, or revoke the license or permit.

Enacted by Chapter 276, 2010 General Session

32B-1-305. Requirement for a criminal background check.

(1) The department shall require an individual listed in Subsection (2) to, in

accordance with this part:

- (a) submit a fingerprint card in a form acceptable to the department; and
- (b) consent to a fingerprint criminal background check by:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.
- (2) The following shall comply with Subsection (1):
 - (a) an individual applying for employment with the department if:
 - (i) the department makes the decision to offer the individual employment with the department; and
 - (ii) once employed, the individual will receive benefits;
 - (b) an individual applying to the commission to operate a package agency;
 - (c) an individual applying to the commission for a license;
 - (d) an individual who with regard to an entity that is applying to the commission to operate a package agency or for a license is:
 - (i) a partner;
 - (ii) a managing agent;
 - (iii) a manager;
 - (iv) an officer;
 - (v) a director;
 - (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporation;
 - (vii) a member who owns at least 20% of a limited liability company; or
 - (viii) an individual employed to act in a supervisory or managerial capacity; or
 - (e) an individual who becomes involved with an entity that operates a package agency or holds a license, if the individual is in a capacity listed in Subsection (2)(d) on or after the day on which the entity:
 - (i) is approved to operate a package agency; or
 - (ii) is licensed by the commission.
- (3) The department shall require compliance with Subsection (2)(e) as a condition of an entity's:
 - (a) continued operation of a package agency; or
 - (b) renewal of a license.
- (4) The department may require as a condition of continued employment that a department employee:
 - (a) submit a fingerprint card in a form acceptable to the department; and
 - (b) consent to a fingerprint criminal background check by:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.

Enacted by Chapter 276, 2010 General Session

32B-1-306. Use of information from a criminal background check.

The commission or department may use information obtained pursuant to Section 32B-1-305 only for one or more of the following purposes:

- (1) enforcing this title;
- (2) determining whether an individual is convicted of any of the following

offenses that disqualify the individual under this title from acting in a capacity described in Subsection 32B-1-305(2):

- (a) a felony under federal law or state law;
- (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (c) a crime involving moral turpitude; or
- (d) on two or more occasions within the previous five years, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs;
- (3) determining whether an individual fails to accurately disclose the individual's criminal history on an application or document filed with the department or commission;
- (4) approving or denying an application for employment with the department;
- (5) taking disciplinary action against a department employee, including possible termination of employment;
- (6) issuing or denying an application to operate a package agency;
- (7) issuing or denying an application for a license;
- (8) issuing or denying the renewal of a package agency agreement;
- (9) issuing or denying the renewal of a license;
- (10) suspending the operation of a package agency;
- (11) terminating a package agency contract; or
- (12) suspending or revoking a license.

Amended by Chapter 307, 2011 General Session

32B-1-307. Criminal background check procedure.

(1) (a) An individual described in Subsections 32B-1-305(2)(b) through (e) shall submit a fingerprint card at the expense of the individual.

(b) The department shall pay the expense of obtaining a fingerprint card required of:

- (i) an individual applying for employment with the department; or
- (ii) a department employee.

(2) (a) The department shall obtain information from a criminal history record maintained by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for a purpose outlined in Section 32B-1-306.

(b) An individual described in Subsections 32B-1-305(2)(b) through (e) shall pay to the department the expense of obtaining the criminal history record described in Subsection (2)(a).

(c) The department shall pay the expense of obtaining the criminal history record required for:

- (i) an individual applying for employment with the department; or
- (ii) a department employee.

(3) (a) The department shall submit a fingerprint card obtained under Section 32B-1-305 of an individual who has not resided in the state for at least two years before the day on which the fingerprint card is submitted to the Utah Bureau of Criminal Identification to be forwarded to the Federal Bureau of Investigation for a nationwide

criminal history record check.

(b) An individual described in Subsections 32B-1-305(2)(b) through (e) shall pay to the department the expense of obtaining the criminal history record described in Subsection (3)(a).

(c) The department shall pay the expense of obtaining the criminal history record required for:

- (i) an individual applying for employment with the department; or
- (ii) a department employee.

(4) The department shall pay the Utah Bureau of Criminal Identification the costs incurred in providing the department criminal background information.

(5) (a) The following may not disseminate a criminal history record obtained under this part to any person except for a purpose described in Section 32B-1-306:

- (i) the commission;
- (ii) a commissioner;
- (iii) the director;
- (iv) the department; or
- (v) a department employee.

(b) (i) Notwithstanding Subsection (5)(a), a criminal history record obtained under this part may be provided by the department to the individual who is the subject of the criminal history record.

(ii) The department shall provide an individual who is the subject of a criminal history record and who requests the criminal history record an opportunity to:

- (A) review the criminal history record; and
- (B) respond to information in the criminal history record.

(6) If an individual described in Subsection 32B-1-305(2) is determined to be disqualified under Subsection 32B-1-306(2)(b), the department shall provide the individual with:

- (a) notice of the reason for the disqualification; and
- (b) an opportunity to respond to the disqualification.

(7) The department shall maintain the following in one or more separate files so that they may be accessed only for a purpose under Section 32B-1-306:

- (a) a fingerprint card submitted under this part; and
- (b) a criminal history record received from:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.

Enacted by Chapter 276, 2010 General Session

32B-1-401. Title.

This part is known as the "Proof of Age Act."

Enacted by Chapter 276, 2010 General Session

32B-1-402. Definitions.

As used in this part:

- (1) "Authorized person" means a person authorized by law to sell or otherwise

handle an alcoholic product.

(2) "Restricted area" means a place where an alcoholic product is sold or consumed, but where under this title a minor is not permitted.

(3) "Statement of age" means a statement signed under Section 32B-1-405 verifying the age of the person signing the statement.

Amended by Chapter 334, 2011 General Session

32B-1-403. Unlawful transfer or use of proof of age -- False information.

(1) (a) It is unlawful for a person to transfer that person's proof of age to another person to aid that person:

- (i) in procuring an alcoholic product;
- (ii) in gaining admittance to a restricted area; or
- (iii) in obtaining employment that under this title may not be obtained by a minor.

(b) A person who permits that person's proof of age to be used by another for a purpose stated in Subsection (1)(a) is guilty of a class B misdemeanor.

(2) (a) It is unlawful for a person to use a proof of age containing false information with the intent to:

- (i) procure an alcoholic product;
- (ii) gain admittance to a restricted area; or
- (iii) obtain employment that under this title may not be obtained by a minor.

(b) Except as provided in Section 32B-4-411, a person who violates this Subsection (2) is guilty of a class A misdemeanor.

Enacted by Chapter 276, 2010 General Session

32B-1-404. Presentation of proof of age upon request.

(1) To obtain one or more of the following, an individual shall present proof of age at the request of a person listed in Subsection (2):

- (a) an alcoholic product;
- (b) admittance to a restricted area; or
- (c) employment that under this title may not be obtained by a minor.

(2) To determine whether the individual described in Subsection (1) is 21 years of age, the following may request a person described in Subsection (1) to present proof of age:

- (a) an authorized person;
- (b) a peace officer;
- (c) a representative of the State Bureau of Investigation of the Department of Public Safety, established in Section 53-10-301; or
- (d) an authorized department employee.

Enacted by Chapter 276, 2010 General Session

32B-1-405. Additional requirements when age is in question.

(1) (a) In addition to requesting the presentation of proof of age under Section 32B-1-404, an authorized person shall require an individual whose age is in question to

sign a statement of age on the form provided under Subsection (1)(b) that includes:

- (i) the date the statement of age is signed; and
- (ii) the number assigned to the individual's proof of age by the issuing authority.

(b) At the request of a retail licensee, the commissioner of public safety shall provide to a retail licensee the form for the statement of age described in this Subsection (1).

(2) (a) An authorized person shall:

(i) file in alphabetical order a statement of age obtained under Subsection (1) by no later than the close of business on the day on which the statement of age is executed; and

(ii) maintain a statement of age on file for three years.

(b) A statement of age is subject to examination by:

(i) a peace officer;

(ii) a representative of the State Bureau of Investigation of the Department of Public Safety, established in Section 53-10-301; or

(iii) an authorized department employee.

Enacted by Chapter 276, 2010 General Session

32B-1-406. Acceptance of identification.

(1) An authorized person may accept as evidence of the legal age of the individual presenting the following:

(a) proof of age; or

(b) if a statement of age is required under Section 32B-1-405:

(i) proof of age; and

(ii) a statement of age.

(2) A statement of age, if properly completed, signed, and filed in accordance with Section 32B-1-405, may be offered as a defense in a case when there is at issue the legality of:

(a) selling, offering for sale, or furnishing an alcoholic product to the individual who signed the statement of age;

(b) admitting the individual who signed the statement of age into a restricted area; or

(c) allowing the individual who signed the statement of age to be employed in employment that under this title may not be obtained by a minor.

(3) An authorized person may not accept a driving privilege card issued in accordance with Section 53-3-207 as evidence of the legal age of an individual.

Enacted by Chapter 276, 2010 General Session

32B-1-407. Verification of proof of age by applicable licensees.

(1) As used in this section, "applicable licensee" means:

(a) a dining club;

(b) a social club; or

(c) a tavern.

(2) Notwithstanding any other provision of this part, an applicable licensee shall

require that an authorized person for the applicable licensee verify proof of age as provided in this section.

(3) An authorized person is required to verify proof of age under this section before an individual who appears to be 35 years of age or younger:

- (a) gains admittance to the premises of a social club licensee or tavern; or
- (b) procures an alcoholic product on the premises of a dining club licensee.

(4) To comply with Subsection (3), an authorized person shall:

- (a) request the individual present proof of age; and
- (b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (5); or
- (ii) if the proof of age cannot be electronically verified as provided in Subsection (4)(b)(i), request that the individual comply with a process established by the commission by rule.

(5) The commission shall establish by rule an electronic verification program that includes the following:

(a) the specifications for the technology used by the applicable licensee to electronically verify proof of age, including that the technology display to the person described in Subsection (2) no more than the following for the individual who presents the proof of age:

- (i) the name;
- (ii) the age;
- (iii) the number assigned to the individual's proof of age by the issuing authority;
- (iv) the birth date;
- (v) the gender; and
- (vi) the status and expiration date of the individual's proof of age; and

(b) the security measures that shall be used by an applicable licensee to ensure that information obtained under this section is:

- (i) used by the applicable licensee only for purposes of verifying proof of age in accordance with this section; and
- (ii) retained by the applicable licensee for seven days after the day on which the applicable licensee obtains the information.

(6) (a) An applicable licensee may not disclose information obtained under this section except as provided under this title.

(b) Information obtained under this section is considered a record for any purpose under Chapter 5, Part 3, Retail Licensee Operational Requirements.

Amended by Chapter 297, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-408. Penalty.

(1) Unless otherwise provided in this title, including Section 32B-4-411, a person who violates this part is guilty of a class B misdemeanor.

(2) A person is not subject to a penalty for a violation of this part if it is proved to the commission or the court hearing the matter that the person charged with the violation acted in good faith.

Enacted by Chapter 276, 2010 General Session

32B-1-501. Title.

This part is known as the "Attire, Conduct, and Entertainment Act."

Enacted by Chapter 276, 2010 General Session

32B-1-502. Purpose -- Application to other laws.

(1) This part establishes reasonable and uniform time, place, and manner of operation requirements relating to attire, conduct, and sexually oriented entertainers on premises or at an event at which an alcoholic product is sold, offered for sale, furnished, or allowed to be consumed under a retail license or permit issued by the commission so as to:

(a) reduce the adverse secondary effects that the attire, conduct, and sexually oriented entertainers may have upon communities of this state; and

(b) protect the health, peace, safety, welfare, and morals of the residents of communities of this state.

(2) Nothing in this part allows the showing or display of any matter that is contrary to:

(a) applicable federal or state statutes prohibiting obscenity; or

(b) state statutes relating to lewdness or indecent public displays.

(3) A local authority may be more restrictive of attire, conduct, or sexually oriented entertainers of the type prohibited in this part.

Enacted by Chapter 276, 2010 General Session

32B-1-503. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-1-504. General requirements on attire and conduct.

The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited:

(1) employing or using a person in the sale, offer for sale, or furnishing of an alcoholic product while the person is in:

(a) a state of nudity;

(b) a state of seminudity; or

(c) performance attire or clothing that exposes to view any portion of:

(i) the female breast below the top of the areola; or

(ii) the cleft of the buttocks;

(2) employing or using the services of a person to mingle with patrons while the person is in:

(a) a state of nudity;

(b) a state of seminudity; or

- (c) performance attire or clothing that exposes to view any portion of:
 - (i) the female breast below the top of the areola; or
 - (ii) the cleft of the buttocks;
- (3) encouraging or permitting a person to:
 - (a) engage in or simulate an act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law; or
 - (b) touch, caress, or fondle the breast, buttocks, anus, or genitals of any other person;
- (4) permitting a person to wear or use a device or covering that:
 - (a) is exposed to view; and
 - (b) simulates all or any portion of the human genitals, anus, pubic area, or female breast;
- (5) permitting a person to use an artificial device or inanimate object to depict an act prohibited by this section;
- (6) permitting a person to remain on premises or at an event who exposes to public view any portion of that person's:
 - (a) genitals, pubic area, or anus; or
 - (b) in the case of a female, the areola and nipple of the breast; or
- (7) showing a film, still picture, electronic reproduction, or other visual reproduction depicting:
 - (a) an act or simulated act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law;
 - (b) a person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;
 - (c) a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; or
 - (d) a scene wherein a person displays the genitals or anus.

Enacted by Chapter 276, 2010 General Session

32B-1-505. Sexually oriented entertainer.

- (1) Subject to the requirements of this part, live entertainment is permitted on premises or at an event regulated by the commission.
- (2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit

a person to:

- (a) appear or perform in a state of nudity;
 - (b) perform or simulate an act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law; or
 - (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.
- (3) A sexually oriented entertainer may perform in a state of seminudity:
- (a) only in:
 - (i) a tavern; or
 - (ii) a social club license premises; and
 - (b) only if:
 - (i) the windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and
 - (ii) the outside entrance doors of the premises remain unlocked.
- (4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:
- (a) approved by the commission in accordance with rules made by the commission;
 - (b) configured so as to preclude a patron from:
 - (i) touching the sexually oriented entertainer; or
 - (ii) placing any money or object on or within the performance attire or the person of the sexually oriented entertainer; and
 - (c) configured so as to preclude the sexually oriented entertainer from touching a patron.
- (5) A sexually oriented entertainer may not touch a patron:
- (a) during the sexually oriented entertainer's performance; or
 - (b) while the sexually oriented entertainer is dressed in performance attire.
- (6) A sexually oriented entertainer, while in the portion of the premises used by patrons, shall be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire from the top of the breast to the knee.
- (7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.
- (8) A patron may not:
- (a) touch a sexually oriented entertainer:
 - (i) during the sexually oriented entertainer's performance; or
 - (ii) while the sexually oriented entertainer is dressed in performance attire; or
 - (b) place money or any other object on or within the performance attire or the person of the sexually oriented entertainer.
- (9) A minor may not be on premises described in Subsection (3).

(10) A person who appears or performs for the entertainment of patrons on premises or at an event regulated by the commission that is not a tavern or social club licensee:

- (a) may not appear or perform in a state of nudity or a state of seminudity; and
- (b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:
 - (i) is not less than the following at its widest point:
 - (A) four inches coverage width in the front of the human body; and
 - (B) five inches coverage width in the back of the human body;
 - (ii) does not taper to less than one inch wide at the narrowest point; and
 - (iii) if covering a female, completely covers the breast below the top of the areola.

Amended by Chapter 297, 2011 General Session

32B-1-506. Compliance -- Administrative enforcement.

(1) A retail licensee, a permittee, and staff of a licensee or permittee shall comply with this part.

(2) Failure to comply with this part may result in a disciplinary proceeding pursuant to Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (a) a licensee or permittee;
- (b) staff of the licensee or permittee;
- (c) both a licensee and staff of the licensee; or
- (d) both a permittee and staff of the permittee.

Enacted by Chapter 276, 2010 General Session

32B-1-601. Title.

This part is known as the "Malted Beverage Act."

Enacted by Chapter 276, 2010 General Session

32B-1-602. Definitions.

As used in this part:

- (1) "Malted beverage" means:
 - (a) beer;
 - (b) a flavored malt beverage; and
 - (c) heavy beer.
- (2) "Packaging" means the outer packaging that is visible to a consumer such as a carton, case, or other wrapper of a container.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-603. Power of the commission and department to classify flavored malt beverages.

(1) The commission and department shall regulate a flavored malt beverage as liquor.

(2) (a) The department shall make available to the public on the Internet a list of the flavored malt beverages authorized to be sold in this state as liquor.

(b) The list described in Subsection (2)(a) shall be updated at least quarterly.

(3) (a) A manufacturer shall file, under penalty of perjury, a report with the department listing each flavored malt beverage manufactured by the manufacturer that the manufacturer wants to distribute in this state subject to the manufacturer holding:

(i) a brewery manufacturing license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License; or

(ii) a certificate of approval.

(b) A manufacturer may not distribute or sell in this state a flavored malt beverage if the manufacturer does not list the flavored malt beverage in a filing with the department in accordance with this Subsection (3) before distributing or selling the flavored malt beverage.

(4) The department may require a manufacturer of a flavored malt beverage to provide the department with a copy of the following filed with the federal Alcohol and Tobacco Tax and Trade Bureau, pursuant to 27 C.F.R. Sec. 25.55:

(a) a statement of process; or

(b) a formula.

(5) (a) A manufacturer of an alcoholic product that the department is classifying or proposes to classify as a flavored malt beverage may submit evidence to the department that its alcoholic product should not be treated as liquor under this section because the alcoholic product:

(i) is obtained by fermentation, infusion, or decoction of a malted grain;

(ii) is produced by processing, filtration, or another method of manufacture that is generally recognized as a traditional process in the production of beer as described in 27 C.F.R. Sec. 25.55;

(iii) does not have added to it a flavor or other ingredient containing alcohol, except for a hop extract; and

(iv) (A) is not one for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

(B) is exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) The department shall review the evidence submitted by the manufacturer under this Subsection (5).

(c) The department shall make available to the public on the Internet a list of the alcoholic products authorized under this Subsection (5) to be sold as beer in this state.

(d) A decision of the department under this Subsection (5) may be appealed to the commission.

Enacted by Chapter 276, 2010 General Session

32B-1-604. Requirements for labeling and packaging -- Authority of the commission and department.

(1) A manufacturer may not distribute or sell a malted beverage:

- (a) unless the label and packaging of the malted beverage:
 - (i) complies with the federal label requirements of 27 C.F.R. Parts 7, 13, and 16; and
 - (ii) clearly gives notice to the public that the malted beverage is an alcoholic product; and
- (b) until the day on which the department in accordance with this title and rules of the commission approves the label and packaging of the malted beverage.
- (2) The department shall review the label and packaging of a malted beverage to ensure that the label and packaging meet the requirements of Subsection (1)(a).
- (3) A manufacturer may comply with the requirement of Subsection (1)(a)(ii) by including on a label and packaging for a malted beverage any of the following terms:
 - (a) beer;
 - (b) ale;
 - (c) porter;
 - (d) stout;
 - (e) lager;
 - (f) lager beer; or
 - (g) another class or type designation commonly applied to a malted beverage that conveys by a recognized term that the product contains alcohol.

Enacted by Chapter 276, 2010 General Session

32B-1-605. General procedure for approval.

- (1) To obtain approval of the label and packaging of a malted beverage, the manufacturer of the malted beverage shall submit an application to the department for approval.
- (2) The application described in Subsection (1) shall be on a form approved by the department and include the following:
 - (a) a copy of a federal certificate of label approval from the Department of Treasury, Tax and Trade Bureau, for each brand and label for which the manufacturer is seeking approval;
 - (b) a complete set of original labels for each size of container of the malted beverage;
 - (c) a description of the size of the container on which a label will be placed;
 - (d) a description of each type of container of the malted beverage; and
 - (e) a description of any packaging for the malted beverage.
- (3) The department may assess a reasonable fee for reviewing a label and packaging for approval.
- (4) (a) The department shall notify a manufacturer within 30 days after the day on which the manufacturer submits an application whether the label and packaging is approved or denied.
- (b) If the department determines that an unusual circumstance requires additional time, the department may extend the time period described in Subsection (4)(a).
- (5) A manufacturer shall obtain the approval of the department of a revision of a previously approved label and packaging before a malted beverage using the revised

label and packaging may be distributed or sold in this state.

(6) (a) The department may revoke a label and packaging previously approved upon a finding that the label and packaging is not in compliance with this title or rules of the commission.

(b) The department shall notify the person who applies for the approval of a label and packaging at least five business days before the day on which a label and packaging approval is considered revoked.

(c) After receiving notice under Subsection (6)(b), a manufacturer may present written argument or evidence to the department on why the revocation should not occur.

(7) A manufacturer that applies for approval of a label and packaging may appeal a denial or revocation of a label and packaging approval to the commission.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-606. Special procedure for flavored malt beverages.

(1) If a flavored malt beverage is labeled or packaged in a manner that is similar to a label or packaging used for a nonalcoholic beverage, a manufacturer of the flavored malt beverage may not distribute or sell the flavored malt beverage in this state until the day on which the manufacturer receives approval of the labeling and packaging from the department in accordance with:

(a) Sections 32B-1-604 and 32B-1-605; and

(b) this section.

(2) The department may not approve the labeling and packaging of a flavored malt beverage described in Subsection (1) unless in addition to the requirements of Section 32B-1-604 the labeling and packaging complies with the following:

(a) The label on the flavored malt beverage shall bear a prominently displayed label or a firmly affixed sticker that provides the following information:

(i) the statement:

(A) "alcoholic beverage"; or

(B) "contains alcohol"; and

(ii) the alcohol content of the flavored malt beverage.

(b) Packaging of a flavored malt beverage shall prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging, the statement:

(i) "alcoholic beverage"; or

(ii) "contains alcohol".

(c) A statement required by Subsection (2)(a) or (b) shall appear in a format required by rule made by the commission.

(d) A statement of alcohol content required by Subsection (2)(a)(ii):

(i) shall state the alcohol content as a percentage of alcohol by volume or by weight;

(ii) may not use an abbreviation, but shall use the complete words "alcohol," "volume," or "weight"; and

(iii) shall be in a format required by rule made by the commission.

(3) The department may reject a label or packaging that appears designed to obscure the information required by Subsection (2).

(4) To determine whether a flavored malt beverage is described in Subsection (1) and subject to this section, the department may consider in addition to other factors one or more of the following factors:

(a) whether the coloring, carbonation, and packaging of the flavored malt beverage:

(i) is similar to those of a nonalcoholic beverage or product; or

(ii) can be confused with a nonalcoholic beverage;

(b) whether the flavored malt beverage possesses a character and flavor distinctive from a traditional malted beverage;

(c) whether the flavored malt beverage:

(i) is prepackaged;

(ii) contains high levels of caffeine and other additives; and

(iii) is marketed as a beverage that is specifically designed to provide energy;

(d) whether the flavored malt beverage contains added sweetener or sugar substitutes; or

(e) whether the flavored malt beverage contains an added fruit flavor or other flavor that masks the taste of a traditional malted beverage.

Enacted by Chapter 276, 2010 General Session

32B-1-607. Rulemaking authority.

The commission may adopt rules necessary to implement this part.

Enacted by Chapter 276, 2010 General Session

32B-1-608. Disciplinary proceeding for violation.

A person who violates this part is subject to a disciplinary proceeding under Chapter 3, Disciplinary Actions and Enforcement Act.

Enacted by Chapter 276, 2010 General Session

32B-2-101. Title.

This chapter is known as the "Alcoholic Beverage Control Administration Act."

Enacted by Chapter 276, 2010 General Session

32B-2-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-2-201. Alcoholic Beverage Control Commission created.

(1) There is created the "Alcoholic Beverage Control Commission." The commission is the governing board over the department.

(2) (a) The commission is composed of seven part-time commissioners appointed by the governor with the consent of the Senate.

(b) No more than four commissioners may be of the same political party.

(3) (a) Except as required by Subsection (3)(b), as terms of commissioners expire, the governor shall appoint each new commissioner or reappointed commissioner to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of no more than three commissioners expire in a fiscal year.

(4) (a) When a vacancy occurs on the commission for any reason, the governor shall appoint a replacement for the unexpired term with the consent of the Senate.

(b) Unless removed in accordance with Subsection (6), a commissioner shall remain on the commission after the expiration of a term until a successor is appointed by the governor, with the consent of the Senate.

(5) A commissioner shall take the oath of office.

(6) (a) The governor may remove a commissioner from the commission for cause, neglect of duty, inefficiency, or malfeasance after a public hearing conducted by:

(i) the governor; or

(ii) an impartial hearing examiner appointed by the governor to conduct the hearing.

(b) At least 10 days before the hearing described in Subsection (6)(a), the governor shall provide the commissioner notice of:

(i) the date, time, and place of the hearing; and

(ii) the alleged grounds for the removal.

(c) The commissioner shall have an opportunity to:

(i) attend the hearing;

(ii) present witnesses and other evidence; and

(iii) confront and cross examine witnesses.

(d) After a hearing under this Subsection (6):

(i) the person conducting the hearing shall prepare written findings of fact and conclusions of law; and

(ii) the governor shall serve a copy of the prepared findings and conclusions upon the commissioner.

(e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing examiner shall issue a written recommendation to the governor in addition to complying with Subsection (6)(d).

(f) A commissioner has five days from the day on which the commissioner receives the findings and conclusions described in Subsection (6)(d) to file written objections to the recommendation before the governor issues a final order.

(g) The governor shall:

(i) issue the final order under this Subsection (6) in writing; and

(ii) serve the final order upon the commissioner.

(7) A commissioner may not receive compensation or benefits for the commissioner's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) The governor shall annually appoint the chair of the commission. A commissioner serves as chair to the commission at the pleasure of the governor. If removed as chair, the commissioner continues to serve as a commissioner unless removed as a commissioner under Subsection (6).

(b) The commission shall elect:

- (i) another commissioner to serve as vice chair; and
- (ii) other commission officers as the commission considers advisable.

(c) A commissioner elected under Subsection (8)(b) shall serve in the office to which the commissioner is elected at the pleasure of the commission.

(9) (a) Each commissioner has equal voting rights on a commission matter when in attendance at a commission meeting.

(b) Four commissioners is a quorum for conducting commission business.

(c) A majority vote of the quorum present at a meeting is required for the commission to act.

(10) (a) The commission shall meet at least monthly, but may hold other meetings at times and places as scheduled by:

- (i) the commission;
- (ii) the chair; or
- (iii) three commissioners upon filing a written request for a meeting with the chair.

(b) Notice of the time and place of a commission meeting shall be given to each commissioner, and to the public in compliance with Title 52, Chapter 4, Open and Public Meetings Act. A commission meeting is open to the public, except for a commission meeting or portion of a commission meeting that is closed by the commission as authorized by Sections 52-4-204 and 52-4-205.

Amended by Chapter 365, 2012 General Session

32B-2-201.5. Commission subcommittee -- Chair's oversight responsibilities.

(1) There is created within the commission two subcommittees consisting of members of the commission and known as the:

- (a) "Compliance, Licensing, and Enforcement Subcommittee"; and
- (b) "Operations and Procurement Subcommittee."

(2) A subcommittee shall have four members, including the chair of the commission. The chair of the commission shall appoint the members to a subcommittee.

(3) The director shall consult with the chair of the commission over:

- (a) the internal affairs of the department; and
- (b) subject to Section 32B-2-207, hiring and firing of upper management of the department.

(4) The commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall establish the duties of the subcommittees

created under this section.

Enacted by Chapter 365, 2012 General Session

32B-2-202. Powers and duties of the commission.

- (1) The commission shall:
 - (a) consistent with the policy established by the Legislature by statute, act as a general policymaking body on the subject of alcoholic product control;
 - (b) adopt and issue policies, rules, and procedures;
 - (c) set policy by written rules that establish criteria and procedures for:
 - (i) issuing, denying, not renewing, suspending, or revoking a package agency, license, permit, or certificate of approval; and
 - (ii) determining the location of a state store, package agency, or retail licensee;
 - (d) decide within the limits, and under the conditions imposed by this title, the number and location of state stores, package agencies, and retail licensees in the state;
 - (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses, permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:
 - (i) a package agency;
 - (ii) a full-service restaurant license;
 - (iii) a master full-service restaurant license;
 - (iv) a limited-service restaurant license;
 - (v) a master limited-service restaurant license;
 - (vi) a club license;
 - (vii) an airport lounge license;
 - (viii) an on-premise banquet license;
 - (ix) a resort license, under which four or more sublicenses may be included;
 - (x) an on-premise beer retailer license;
 - (xi) a reception center license;
 - (xii) a beer-only restaurant license;
 - (xiii) subject to Subsection (4), a single event permit;
 - (xiv) subject to Subsection (4), a temporary beer event permit;
 - (xv) a special use permit;
 - (xvi) a manufacturing license;
 - (xvii) a liquor warehousing license;
 - (xviii) a beer wholesaling license; and
 - (xix) one of the following that holds a certificate of approval:
 - (A) an out-of-state brewer;
 - (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
 - (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
 - (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke conditional licenses for the purchase, storage, sale, furnishing, consumption, manufacture, and distribution of an alcoholic product;
 - (g) prescribe the duties of the department in assisting the commission in issuing a package agency, license, permit, or certificate of approval under this title;
 - (h) to the extent a fee is not specified in this title, establish a fee allowed under

this title in accordance with Section 63J-1-504;

(i) fix prices at which liquor is sold that are the same at all state stores, package agencies, and retail licensees;

(j) issue and distribute price lists showing the price to be paid by a purchaser for each class, variety, or brand of liquor kept for sale by the department;

(k) (i) require the director to follow sound management principles; and

(ii) require periodic reporting from the director to ensure that:

(A) sound management principles are being followed; and

(B) policies established by the commission are being observed;

(l) (i) receive, consider, and act in a timely manner upon the reports, recommendations, and matters submitted by the director to the commission; and

(ii) do the things necessary to support the department in properly performing the department's duties;

(m) obtain temporarily and for special purposes the services of an expert or person engaged in the practice of a profession, or a person who possesses a needed skill if:

(i) considered expedient; and

(ii) approved by the governor;

(n) prescribe the conduct, management, and equipment of premises upon which an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;

(o) make rules governing the credit terms of beer sales within the state to retail licensees; and

(p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take disciplinary action against a person subject to administrative action.

(2) Consistent with the policy established by the Legislature by statute, the power of the commission to do the following is plenary, except as otherwise provided by this title, and not subject to review:

(a) establish a state store;

(b) issue authority to act as a package agent or operate a package agency; and

(c) issue or deny a license, permit, or certificate of approval.

(3) If the commission is authorized or required to make a rule under this title, the commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Notwithstanding Subsections (1)(e)(xiii) and (xiv), the director or deputy director may issue an event permit in accordance with Chapter 9, Event Permit Act.

Amended by Chapter 349, 2013 General Session

32B-2-203. Department of Alcoholic Beverage Control created.

(1) There is created the Department of Alcoholic Beverage Control. The department is governed by the commission.

(2) The director of alcoholic beverage control appointed under Section 32B-2-205 shall administer the department.

(3) The director shall allocate the duties within the department into the divisions, bureaus, sections, offices, and committees as the director considers necessary for the administration of this title.

(4) The department shall cooperate with any other recognized agency in the administration of this title and in the enforcement of a policy or rule of the commission or policy of the director.

Enacted by Chapter 276, 2010 General Session

32B-2-204. Powers and duties of the department -- Immunity.

- (1) The department shall control liquor merchandise inventory including:
- (a) listing and delisting a product;
 - (b) the procedures for testing a new product;
 - (c) purchasing policy;
 - (d) turnover requirements for a regularly coded product to be continued; and
 - (e) the disposition of discontinued, distressed, or unsaleable merchandise.
- (2) (a) The department shall report to the governor on the administration of this title:
- (i) as the governor may require; and
 - (ii) annually by no later than November 30, for the fiscal year ending June 30 of the year in which the report is made.
- (b) A report under this Subsection (2) shall contain:
- (i) a statement of the nature and amount of the business transacted by the department during the year;
 - (ii) a statement of the department's assets and liabilities including a profit and loss account, and other accounts and matters necessary to show the results of operations of the department for the year;
 - (iii) general information on the application of this title in the state; and
 - (iv) any other information requested by the governor.
- (c) The department shall submit a copy of a report described in this Subsection (2) to the Legislature.
- (3) The department shall maintain insurance against loss on each motor vehicle operated by it on any public highway. A motor vehicle shall be covered for:
- (a) liability imposed by law upon the department for damages from bodily injuries suffered by one or more persons by reason of the ownership, maintenance, or use of the motor vehicle; and
 - (b) liability or loss from damage to or destruction of property of any description, including liability of the department for the resultant loss of use of the property, which results from accident due to the ownership, maintenance, or use of the motor vehicle.
- (4) (a) The department may sue, be sued, and defend in a proceeding, in a court of law or otherwise, in the name of the department.
- (b) An action may not be taken:
 - (i) against the commission; or
 - (ii) in the name of a commissioner.
- (5) The department is liable to respond in damages in a case if a private corporation under the same circumstances would be liable.
- (6) (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies in an action commenced against the department for damages sustained as a result of department ownership, maintenance, or use of a motor vehicle under Subsections (4)

and (5).

(b) In an action described in Subsection (6)(a), the commission and each commissioner are immune from suit.

Enacted by Chapter 276, 2010 General Session

32B-2-205. Director of alcoholic beverage control.

(1) (a) In accordance with Subsection (1)(b), the governor, with the consent of the Senate, shall appoint a director of alcoholic beverage control to a four-year term. The director may be appointed to more than one four-year term. The director is the administrative head of the department.

(b) (i) The governor shall appoint the director from nominations made by the commission.

(ii) The commission shall submit the nomination of three individuals to the governor for appointment of the director.

(iii) By no later than 30 calendar days from the day on which the governor receives the three nominations submitted by the commission, the governor may:

(A) appoint the director; or

(B) reject the three nominations.

(iv) If the governor rejects the nominations or fails to take action within the 30-day period, the commission shall nominate three different individuals from which the governor may appoint the director or reject the nominations until such time as the governor appoints the director.

(v) The governor may reappoint the director without seeking nominations from the commission. Reappointment of a director is subject to the consent of the Senate.

(c) If there is a vacancy in the position of director, during the nomination process described in Subsection (1)(b), the governor may appoint an interim director for a period of up to 30 calendar days. If a director is not appointed within the 30-day period, the interim director may continue to serve beyond the 30-day period subject to the consent of the Senate at the next scheduled time for the Senate giving consent to appointments of the governor. Except that if the Senate does not act on the consent to the appointment of the interim director within 60 days of the end of the initial 30-day period, the interim director may continue as the interim director.

(d) The director may be terminated by:

(i) the commission by a vote of four commissioners; or

(ii) the governor after consultation with the commission.

(e) The director may not be a commissioner.

(f) The director shall:

(i) be qualified in administration;

(ii) be knowledgeable by experience and training in the field of business management; and

(iii) possess any other qualification prescribed by the commission.

(2) The governor shall establish the director's compensation within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(3) The director shall:

(a) carry out the policies of the commission;

- (b) carry out the policies of the department;
- (c) fully inform the commission of the operations and administrative activities of the department; and
- (d) assist the commission in the proper discharge of the commission's duties.

Amended by Chapter 365, 2012 General Session

32B-2-206. Powers and duties of the director.

Subject to the powers and responsibilities of the commission under this title, the director:

(1) (a) shall prepare and propose to the commission general policies, rules, and procedures governing the administrative activities of the department; and

(b) may submit other recommendations to the commission as the director considers in the interest of the commission's or the department's business;

(2) within the general policies, rules, and procedures of the commission, shall:

(a) provide day-to-day direction, coordination, and delegation of responsibilities in the administrative activities of the department's business; and

(b) make internal department policies and procedures relating to:

(i) department personnel matters; and

(ii) the day-to-day operation of the department;

(3) subject to Section 32B-2-207, shall appoint or employ personnel as considered necessary in the administration of this title, and with regard to the personnel shall:

(a) prescribe the conditions of employment;

(b) define the respective duties and powers; and

(c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel Management Act;

(4) shall establish and secure adherence to a system of reports, controls, and performance in matters relating to personnel, security, department property management, and operation of:

(a) a department office;

(b) a warehouse;

(c) a state store; and

(d) a package agency;

(5) within the policies, rules, and procedures approved by the commission and provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale, furnishing, transportation, or delivery of an alcoholic product;

(6) shall prepare for commission approval:

(a) recommendations regarding the location, establishment, relocation, and closure of a state store or package agency;

(b) recommendations regarding the issuance, denial, nonrenewal, suspension, or revocation of a license, permit, or certificate of approval;

(c) an annual budget, proposed legislation, and reports as required by law and sound business principles;

(d) plans for reorganizing divisions of the department and the functions of the divisions;

- (e) manuals containing commission and department policies, rules, and procedures;
- (f) an inventory control system;
- (g) any other report or recommendation requested by the commission;
- (h) rules described in Subsection 32B-2-202(1)(o) governing the credit terms of the sale of beer;
- (i) rules governing the calibration, maintenance, and regulation of a calibrated metered dispensing system;
- (j) rules governing the display of a list of types and brand names of liquor furnished through a calibrated metered dispensing system;
- (k) price lists issued and distributed showing the price to be paid for each class, variety, or brand of liquor kept for sale at a state store, package agency, or retail licensee;
- (l) policies or rules prescribing the books of account maintained by the department and by a state store, package agency, or retail licensee; and
- (m) a policy prescribing the manner of giving and serving a notice required by this title or rules made under this title;
- (7) shall make available through the department to any person, upon request, a copy of a policy made by the director;
- (8) shall make and maintain a current copy of a manual that contains the rules and policies of the commission and department available for public inspection;
- (9) (a) after consultation with the governor, shall determine whether an alcoholic product should not be sold, offered for sale, or otherwise furnished in an area of the state during a period of emergency that is proclaimed by the governor to exist in that area; and
- (b) shall issue a necessary public announcement or policy with respect to the determination described in Subsection (9)(a);
- (10) issue event permits in accordance with Chapter 9, Event Permit Act; and
- (11) shall perform any other duty required by the commission or by law.

Amended by Chapter 365, 2012 General Session

32B-2-207. Department employees -- Requirements.

- (1) "Upper management" means the director, a deputy director, or other Schedule AD, AR, or AS employee of the department, as defined in Section 67-19-15, except for the director of internal audits and auditors hired by the director of internal audits under Section 32B-2-302.5.
- (2) (a) Subject to this title, including the requirements of Chapter 1, Part 3, Qualifications and Background, the director may prescribe the qualifications of a department employee.
- (b) The director may hire an employee who is upper management only with the approval of four commissioners voting in an open meeting.
- (c) Except as provided in Section 32B-1-303, the executive director may dismiss an employee who is upper management after consultation with the chair of the commission.
- (3) (a) A person who seeks employment with the department shall file with the

department an application under oath or affirmation in a form prescribed by the commission.

(b) Upon receiving an application, the department shall determine whether the individual is:

- (i) of good moral character; and
- (ii) qualified for the position sought.

(c) The department shall select an individual for employment or advancement with the department in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(4) The following are not considered a department employee:

- (a) a package agent;
- (b) a licensee;
- (c) a staff member of a package agent; or
- (d) staff of a licensee.

(5) The department may not employ a minor to:

- (a) work in:
 - (i) a state store; or
 - (ii) a department warehouse; or
- (b) engage in an activity involving the handling of an alcoholic product.

Amended by Chapter 365, 2012 General Session

32B-2-208. Services of State Health Laboratory.

The State Health Laboratory shall make its services available to the department when necessary. The department shall pay for the services from the Liquor Control Fund to the Department of Health.

Enacted by Chapter 276, 2010 General Session

32B-2-209. Prohibited interests, relationships, and actions.

(1) As used in this section:

(a) "Applicable department employee" means a department employee who is:

- (i) designated as a deputy or assistant director;
- (ii) a chief administrative officer of a division within the department;
- (iii) a department compliance officer; or
- (iv) an employee directly performing purchasing, licensing, or compliance

functions of the department.

(b) "Immediate family" means an individual's:

- (i) spouse; or
- (ii) child who is younger than 18 years of age.

(c) "Permit" does not include:

- (i) an industrial or manufacturing use permit;
- (ii) a scientific or educational use permit; or
- (iii) a religious wine use permit.

(2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, an individual who is a commissioner, the director, or an

applicable department employee may not:

(a) have a pecuniary interest, whether as the holder of stock or other securities other than a mutual fund, in a person who applies for or holds a package agency, license, or permit under this title;

(b) otherwise have a conflict of interest with a person who applies for or holds a package agency, license, or permit under this title;

(c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment;

(d) have a direct business relationship with a person subject to administrative action under this title;

(e) accept a gift, gratuity, emolument, or employment from:

(i) a person who applies for or holds a package agency, license, or permit under this title; or

(ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, or permit under this title, except that a commissioner, the director, or an applicable department employee may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or

(f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, or permit under this title.

(3) An immediate family member of a commissioner, the director, or an applicable department employee may not:

(a) have a pecuniary interest, whether as the holder of stock or other securities other than a mutual fund, in a person who applies for or holds a package agency, license, or permit under this title;

(b) otherwise have a conflict of interest with a person who applies for or holds a package agency, license, or permit under this title;

(c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment of the commissioner, director, or applicable department employee for whom the person is immediate family;

(d) accept a gift, gratuity, emolument, or employment from:

(i) a person who applies for or holds a package agency, license, or permit under this title; or

(ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, or permit under this title, except that an immediate family member may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or

(e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, or permit under this title.

(4) An officer, agent, attorney, or employee of a person who applies for or holds a package agency, license, or permit under this title may not directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the department the appointment of any person:

- (a) as a commissioner;
- (b) as director of the department; or
- (c) to a department staff position.

(5) (a) A commissioner shall disclose during a meeting of the commission a potential violation of this section, including the existence and nature of a professional, financial, business, or personal interest with a person who holds, or an applicant for, a package agency, license, or permit issued under this title that may result in a violation of this section.

(b) After a commissioner makes a disclosure under Subsection (5)(a):

(i) the commission may, by motion, determine whether there is a potential violation of this section;

(ii) if the commission determines that there is a potential violation of this section:

(A) the commission shall notify the governor; and

(B) the commissioner may not vote on any matter that would result in the potential violation of this section; and

(iii) if the commission determines that there is not a potential violation of this section, a commissioner may elect whether to vote on the issue that gives rise to the disclosure under Subsection (5)(a).

(c) The commission shall record any declaration of a potential violation of this section in the minutes of the meeting.

Amended by Chapter 365, 2012 General Session

32B-2-210. Alcoholic Beverage Control Advisory Board.

(1) There is created within the department an advisory board known as the "Alcoholic Beverage Control Advisory Board."

(2) The advisory board shall consist of 12 members as follows:

(a) the following voting members appointed by the commission, a representative of:

- (i) a full-service restaurant licensee;
- (ii) a limited-service restaurant licensee;
- (iii) a beer-only restaurant licensee;
- (iv) a social club licensee;
- (v) a fraternal club licensee;
- (vi) a dining club licensee;
- (vii) a wholesaler licensee;
- (viii) an on-premise banquet licensee;
- (ix) an on-premise beer retailer licensee; and
- (x) a reception center licensee;

(b) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee, who serves as a voting member; and

(c) the chair of the commission or the chair's designee from the members of the commission, who shall serve as a nonvoting member.

(3) (a) Except as required by Subsection (3)(b), as terms of current voting members of the advisory board expire, the commission shall appoint each new member or reappointed member to a four-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of voting advisory board members are staggered so that approximately half of the advisory board is appointed every two years.

(c) No two members of the board may be employed by the same company or nonprofit organization.

(4) (a) When a vacancy occurs in the membership for any reason, the commission shall appoint a replacement for the unexpired term.

(b) The commission shall terminate the term of a voting advisory board member who ceases to be representative as designated by the member's original appointment.

(5) The advisory board shall meet no more than quarterly as called by the chair for the purpose of advising the commission and the department, with discussion limited to administrative rules made under this title.

(6) The chair of the commission or the chair's designee shall serve as the chair of the advisory board and call the necessary meetings.

(7) (a) Six members of the board constitute a quorum of the board.

(b) An action of the majority when a quorum is present is the action of the board.

(8) The department shall provide staff support to the advisory board.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Enacted by Chapter 365, 2012 General Session

32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.

(1) The following are property of the state:

(a) the money received in the administration of this title, except as otherwise provided; and

(b) property acquired, administered, possessed, or received by the department.

(2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

(b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the administration of this title shall be transferred to the Liquor Control Fund.

(3) (a) There is created an enterprise fund known as the "Markup Holding Fund."

(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the markup imposed under Section 32B-2-304 into the Markup Holding Fund.

(c) Money deposited into the Markup Holding Fund may be expended:

(i) to the extent appropriated by the Legislature; and

(ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection 32B-2-305(4).

(4) The department may draw from the Liquor Control Fund only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant without an appropriation from the Liquor Control Fund for an

expenditure that is directly incurred by the department:

- (a) to purchase an alcoholic product;
- (b) to transport an alcoholic product from the supplier to a warehouse of the department; and
- (c) for variances related to an alcoholic product.

(5) The department shall transfer annually from the Liquor Control Fund and the State Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of money under this Subsection (5). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year. The Division of Finance may make year-end closing entries in the Liquor Control Fund and the Markup Holding Fund in order to comply with Subsection 51-5-6(2).

- (6) (a) By the end of each day, the department shall:
 - (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
 - (ii) report the deposit to the state treasurer.
- (b) A commissioner or department employee is not personally liable for a loss caused by the default or failure of a qualified depository.
- (c) Money deposited in a qualified depository is entitled to the same priority of payment as other public funds of the state.

(7) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant drawn against the Liquor Control Fund by the department, the cash resources of the General Fund may be used to the extent necessary. At no time may the fund equity of the Liquor Control Fund fall below zero.

Amended by Chapter 349, 2013 General Session

32B-2-302. Exempt from Division of Finance -- Application of procurement -- External audits.

(1) (a) The laws that govern the Division of Finance are not applicable to the department in the purchase and sale of an alcoholic product.

(b) The department is exempt from Title 63G, Chapter 6a, Utah Procurement Code, for the purchase of an alcoholic product. The department is subject to Title 63G, Chapter 6a, Utah Procurement Code, for any purchase other than for an alcoholic product.

- (2) The state auditor shall:
 - (a) annually perform a financial audit of the department's accounts; and
 - (b) determine the scope and focus of the financial audit in an open meeting of the commission before the audit commences.

(3) Every two years, beginning for fiscal year 2013-14, the state auditor shall conduct an audit of the department's:

- (a) management operations, best practices, and efficiency; and
- (b) ethics and statutory compliance.

(4) In addition to complying with Subsections (2) and (3), the state auditor may engage in an activity related to the department or commission allowed under Utah Constitution, Article VII, Section 15 or Title 67, Chapter 3, Auditor.

(5) The state auditor shall forward an audit report issued under Subsection (2) or (3) to the following by no later than 30 days after the day on which the audit report is made:

- (a) the governor;
- (b) the Legislative Management Committee;
- (c) the director; and
- (d) the legislative auditor general.

Amended by Chapter 349, 2013 General Session

32B-2-302.5. Internal audits.

(1) In accordance with Title 63I, Chapter 5, Utah Internal Audit Act, the department shall conduct various types of auditing procedures determined by the commission through an internal audit division.

(2) (a) The commission shall appoint an internal audit director who shall serve at the pleasure of the commission.

(b) The internal audit director shall hire auditors in the division with the approval of the commission.

(c) The internal audit director may dismiss an auditor with the approval of the commission.

(3) Notwithstanding Section 63I-5-301, the commission shall serve as the audit committee.

(4) Subject to the other provisions of this section, the internal audit director shall have the powers and duties described in Section 63I-5-401 or any other duty prescribed by the chair of the commission. The internal audit director shall oversee and materially participate in internal audits conducted under this section.

(5) (a) Once an internal audit is completed, the internal audit director shall provide an internal audit report to the director, the chair of the commission, and the other commissioners.

(b) Within five business days of receipt of the internal audit, the director shall prepare a written response and deliver it to the chair of the commission and the other commissioners.

(c) Within five business days of receipt of the director's written response under Subsection (5)(b), the chair of the commission may prepare a separate response.

(d) Within 12 business days of the internal audit being given to the director, chair of the commission, and the other commissioners under Subsection (5)(a), the chair of the commission shall forward the audit and any response to:

- (i) the governor;
- (ii) the legislative auditor general; and
- (iii) the Legislative Management Committee.

(e) Within 120 calendar days of an internal audit being completed, the commission shall prepare a report to the governor describing steps taken to implement the recommendations of the audit or a detailed explanation of why recommendations have not been implemented. The chair of the commission shall forward the report to:

- (i) the legislative auditor general; and
- (ii) the Legislative Management Committee.

(f) The chair of the commission shall make such other reports as the governor requests.

Enacted by Chapter 365, 2012 General Session

32B-2-303. Purchase of liquor.

(1) The department may not purchase or stock spirituous liquor in a container smaller than 200 milliliters, except as otherwise allowed by the commission.

(2) (a) An order by the department for the purchase of liquor, or a cancellation by the department of an order of liquor:

(i) shall be executed in writing by the department; and

(ii) is not valid or binding unless executed in writing.

(b) The department shall maintain a copy of an order or cancellation on file for at least three years.

(c) An electronic record satisfies Subsections (2)(a) and (b) pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act.

Amended by Chapter 307, 2011 General Session

32B-2-304. Liquor price -- School lunch program -- Remittance of markup.

(1) For purposes of this section:

(a) (i) "Landed case cost" means:

(A) the cost of the product; and

(B) inbound shipping costs incurred by the department.

(ii) "Landed case cost" does not include the outbound shipping cost from a warehouse of the department to a state store.

(b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage.

(2) Except as provided in Subsection (3):

(a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;

(b) wine sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;

(c) heavy beer sold by the department within the state shall be marked up in an amount not less than 64.5% above the landed case cost to the department; and

(d) a flavored malt beverage sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department.

(3) (a) Liquor sold by the department to a military installation in Utah shall be marked up in an amount not less than 15% above the landed case cost to the department.

(b) Except for spirituous liquor sold by the department to a military installation in Utah, spirituous liquor that is sold by the department within the state shall be marked up 47% above the landed case cost to the department if:

- (i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 proof gallons of spirituous liquor in a calendar year; and
- (ii) the manufacturer applies to the department for a reduced markup.
- (c) Except for wine sold by the department to a military installation in Utah, wine that is sold by the department within the state shall be marked up 47% above the landed case cost to the department if:
 - (i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of wine in a calendar year; and
 - (ii) the manufacturer applies to the department for a reduced markup.
- (d) Except for heavy beer sold by the department to a military installation in Utah, heavy beer that is sold by the department within the state shall be marked up 30% above the landed case cost to the department if:
 - (i) a small brewer manufactures the heavy beer; and
 - (ii) the small brewer applies to the department for a reduced markup.
- (e) The department shall verify an amount described in Subsection (3)(b), (c), or (d) pursuant to a federal or other verifiable production report.
- (4) The department shall deposit 10% of the total gross revenue from sales of liquor with the state treasurer to be credited to the Uniform School Fund and used to support the school lunch program administered by the State Board of Education under Section 53A-19-201.
- (5) This section does not prohibit the department from selling discontinued items at a discount.
- (6) (a) The department shall collect the markup and remit the markup collected by the department under this section:
 - (i) to the State Tax Commission monthly on or before the last day of the month immediately following the last day of the previous month; and
 - (ii) using a form prescribed by the State Tax Commission.
- (b) For liquor provided to a package agency on consignment, the department shall remit the markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the department for the liquor provided to the package agency.
- (c) The State Tax Commission shall deposit revenues remitted to it under Subsection (6)(a) into the Markup Holding Fund created in Section 32B-2-301.
- (d) The assessment, collection, and refund of a markup under this section shall be in accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.
- (e) The department if it fails to comply with this Subsection (6), is subject to penalties as provided in Section 59-1-401 and interest as provided in Section 59-1-402.
- (f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

Amended by Chapter 357, 2012 General Session

32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.

- (1) As used in this section:

(a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.
(b) "Enforcement ratio" is as defined in Section 32B-1-201.
(c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in this section.

(2) There is created an expendable special revenue fund known as the "Alcoholic Beverage Control Act Enforcement Fund."

(3) (a) The fund consists of:
(i) deposits made under Subsection (4); and
(ii) interest earned on the fund.
(b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

(4) After the deposit made under Section 32B-2-304 for the school lunch program, the department shall deposit 1% of the total gross revenue from the sale of liquor with the state treasurer to be credited to the fund to be used by the Department of Public Safety as provided in Subsection (5).

(5) (a) The Department of Public Safety shall expend money from the fund to supplement appropriations by the Legislature so that the Department of Public Safety maintains a sufficient number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each year the enforcement ratio as of July 1 is equal to or less than the number specified in Section 32B-1-201.

(b) Beginning July 1, 2012, four alcohol-related law enforcement officers shall have as a primary focus the enforcement of this title in relationship to restaurants.

Amended by Chapter 400, 2013 General Session

32B-2-306. Underage drinking prevention media and education campaign.

(1) As used in this section:

(a) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(b) "Restricted account" means the Underage Drinking Prevention Media and Education Campaign Restricted Account created in this section.

(2) (a) There is created a restricted account within the General Fund known as the "Underage Drinking Prevention Media and Education Campaign Restricted Account."

(b) The restricted account consists of:
(i) deposits made under Subsection (3); and
(ii) interest earned on the restricted account.

(3) The department shall deposit 0.6% of the total gross revenue from sales of liquor with the state treasurer, as determined by the total gross revenue collected for the fiscal year two years preceding the fiscal year for which the deposit is made, to be credited to the restricted account and to be used by the department as provided in Subsection (5).

(4) The advisory council shall:

(a) provide ongoing oversight of a media and education campaign funded under this section;

(b) create an underage drinking prevention workgroup consistent with guidelines

proposed by the advisory council related to the membership and duties of the underage drinking prevention workgroup;

(c) create guidelines for how money appropriated for a media and education campaign can be used;

(d) include in the guidelines established pursuant to this Subsection (4) that a media and education campaign funded under this section is carefully researched and developed, and appropriate for target groups; and

(e) approve plans submitted by the department in accordance with Subsection (5).

(5) (a) Subject to appropriation from the Legislature, the department shall expend money from the restricted account to direct and fund one or more media and education campaigns designed to reduce underage drinking in cooperation with the advisory council.

(b) The department shall:

(i) in cooperation with the underage drinking prevention workgroup created under Subsection (4), prepare and submit a plan to the advisory council detailing the intended use of the money appropriated under this section;

(ii) upon approval of the plan by the advisory council, conduct the media and education campaign in accordance with the guidelines made by the advisory council; and

(iii) submit to the advisory council annually by no later than October 1, a written report detailing the use of the money for the media and education campaigns conducted under this Subsection (5) and the impact and results of the use of the money during the prior fiscal year ending June 30.

Enacted by Chapter 388, 2012 General Session

32B-2-401. Title.

This part is known as the "Alcoholic Beverage Enforcement and Treatment Restricted Account Act."

Enacted by Chapter 276, 2010 General Session

32B-2-402. Definitions -- Calculations.

(1) As used in this part:

(a) "Account" means the Alcoholic Beverage Enforcement and Treatment Restricted Account created in Section 32B-2-403.

(b) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(c) "Alcohol-related offense" means:

(i) a violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of:

(I) Subsection 41-6a-510(1); or

(II) Section 76-5-207; or

(ii) an offense involving the illegal:

- (A) sale of an alcoholic product;
- (B) consumption of an alcoholic product;
- (C) distribution of an alcoholic product;
- (D) transportation of an alcoholic product; or
- (E) possession of an alcoholic product.
- (d) "Annual conviction time period" means the time period that:
 - (i) begins on July 1 and ends on June 30; and
 - (ii) immediately precedes the fiscal year for which an appropriation under this part is made.
- (e) "Municipality" means:
 - (i) a city; or
 - (ii) a town.
- (2) For purposes of Subsection 32B-2-404(1)(b)(iii), the number of premises located within the limits of a municipality or county:
 - (a) is the number determined by the department to be so located;
 - (b) includes the aggregate number of premises of the following:
 - (i) a state store;
 - (ii) a package agency; and
 - (iii) a retail licensee; and
 - (c) for a county, consists only of the number located within an unincorporated area of the county.
- (3) The department shall determine:
 - (a) a population figure according to the most current population estimate prepared by the Utah Population Estimates Committee;
 - (b) a county's population for the 25% distribution to municipalities and counties under Subsection 32B-2-404(1)(b)(i) only with reference to the population in the unincorporated areas of the county; and
 - (c) a county's population for the 25% distribution to counties under Subsection 32B-2-404(1)(b)(iv) only with reference to the total population in the county, including that of a municipality.
- (4) (a) A conviction occurs in the municipality or county that actually prosecutes the offense to judgment.
- (b) If a conviction is based upon a guilty plea, the conviction is considered to occur in the municipality or county that, except for the guilty plea, would have prosecuted the offense.

Amended by Chapter 307, 2011 General Session

32B-2-403. Alcoholic Beverage Enforcement and Treatment Restricted Account created.

- (1) (a) There is created in the General Fund a restricted account known as the "Alcoholic Beverage Enforcement and Treatment Restricted Account."
- (b) The account is funded from:
 - (i) money deposited by the state treasurer in accordance with Section 59-15-109;
 - (ii) appropriations made to the account by the Legislature; and

(iii) interest described in Subsection (1)(c).

(c) Interest earned on the account shall be deposited into the account.

(2) (a) Consistent with the policies provided in Subsection 32B-1-103(4)(b), money in the account shall be used for statewide public purposes, including promoting the reduction of the harmful effects of over consumption of alcoholic products by an adult and alcohol consumption by minors, by exclusively funding programs or projects related to prevention, treatment, detection, prosecution, and control of violations of this title and other offenses in which alcohol is a contributing factor except as provided in Subsection (2)(b).

(b) The portion distributed under this part to a county may also be used for the confinement or treatment of persons arrested for or convicted of offenses in which alcohol is a contributing factor.

(c) A municipality or county entitled to receive money shall use the money exclusively as required by this Subsection (2).

(3) The appropriations provided for under Section 32B-2-404 are:

(a) intended to supplement the budget of the appropriate agencies of each municipality and county within the state to enable the municipalities and counties to more effectively fund the programs and projects described in Subsection (2); and

(b) not intended to replace money that would otherwise be allocated for the programs and projects in Subsection (2).

Enacted by Chapter 276, 2010 General Session

32B-2-404. Alcoholic Beverage Enforcement and Treatment Restricted Account distribution.

(1) (a) The money deposited into the account under Section 32B-2-403 shall be distributed to municipalities and counties:

(i) to the extent appropriated by the Legislature, except that the Legislature shall appropriate each fiscal year an amount equal to at least the amount deposited in the account in accordance with Section 59-15-109; and

(ii) as provided in this Subsection (1).

(b) The amount appropriated from the account shall be distributed as follows:

(i) 25% to municipalities and counties on the basis of the percentage of the state population residing in each municipality and county;

(ii) 30% to municipalities and counties on the basis of each municipality's and county's percentage of the statewide convictions for all alcohol-related offenses;

(iii) 20% to municipalities and counties on the basis of the percentage of the following in the state that are located in each municipality and county:

(A) state stores;

(B) package agencies;

(C) retail licensees; and

(D) off-premise beer retailers; and

(iv) 25% to the counties for confinement and treatment purposes authorized by this part on the basis of the percentage of the state population located in each county.

(c) (i) Except as provided in Subsection (1)(c)(ii), if a municipality does not have a law enforcement agency:

- (A) the municipality may not receive money under this part; and
- (B) the State Tax Commission:
 - (I) may not distribute the money the municipality would receive but for the municipality not having a law enforcement agency to that municipality; and
 - (II) shall distribute the money that the municipality would have received but for it not having a law enforcement agency to the county in which the municipality is located for use by the county in accordance with this part.
- (ii) If the advisory council finds that a municipality described in Subsection (1)(c)(i) demonstrates that the municipality can use the money that the municipality is otherwise eligible to receive in accordance with this part, the advisory council may direct the State Tax Commission to distribute the money to the municipality.
- (2) To determine the distribution required by Subsection (1)(b)(ii), the State Tax Commission shall annually:
 - (a) for an annual conviction time period:
 - (i) multiply by two the total number of convictions in the state obtained during the annual conviction time period for violation of:
 - (A) Section 41-6a-502; or
 - (B) an ordinance that complies with the requirements of Subsection 41-6a-510(1) or Section 76-5-207; and
 - (ii) add to the number calculated under Subsection (2)(a)(i) the number of convictions obtained during the annual conviction time period for the alcohol-related offenses other than the alcohol-related offenses described in Subsection (2)(a)(i);
 - (b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum obtained in Subsection (2)(a); and
 - (c) multiply the amount calculated under Subsection (2)(b), by the number of convictions obtained in each municipality and county during the annual conviction time period for alcohol-related offenses.
- (3) By not later than September 1 each year:
 - (a) the state court administrator shall certify to the State Tax Commission the number of convictions obtained for alcohol-related offenses in each municipality or county in the state during the annual conviction time period; and
 - (b) the advisory council shall notify the State Tax Commission of any municipality that does not have a law enforcement agency.
- (4) By not later than December 1 of each year, the advisory council shall notify the State Tax Commission for the fiscal year of appropriation of:
 - (a) a municipality that may receive a distribution under Subsection (1)(c)(ii);
 - (b) a county that may receive a distribution allocated to a municipality described in Subsection (1)(c)(i);
 - (c) a municipality or county that may not receive a distribution because the advisory council has suspended the payment under Subsection 32B-2-405(2)(a); and
 - (d) a municipality or county that receives a distribution because the suspension of payment has been cancelled under Subsection 32B-2-405(2).
- (5) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax Commission shall annually distribute to each municipality and county the portion of the appropriation that the municipality or county is eligible to receive under this part, except for any municipality or county that the advisory council notifies the State Tax

Commission in accordance with Subsection (4) may not receive a distribution in that fiscal year.

(b) (i) The State Tax Commission shall prepare forms for use by a municipality or county in applying for a distribution under this part.

(ii) A form described in this Subsection (5) may require the submission of information the State Tax Commission considers necessary to enable the State Tax Commission to comply with this part.

Amended by Chapter 307, 2011 General Session

32B-2-405. Reporting by municipalities and counties -- Grants.

(1) A municipality or county that receives money under this part during a fiscal year shall by no later than October 1 following the fiscal year:

(a) report to the advisory council:

(i) the programs or projects of the municipality or county that receive money under this part;

(ii) if the money for programs or projects were exclusively used as required by Subsection 32B-2-403(2);

(iii) indicators of whether the programs or projects that receive money under this part are effective; and

(iv) if money received under this part was not expended by the municipality or county; and

(b) provide the advisory council a statement signed by the chief executive officer of the county or municipality attesting that the money received under this part was used in addition to money appropriated or otherwise available for the county's or municipality's law enforcement and was not used to supplant that money.

(2) The advisory council may, by a majority vote:

(a) suspend future payments under Subsection 32B-2-404(4) to a municipality or county that:

(i) does not file a report that meets the requirements of Subsection (1); or

(ii) the advisory council finds does not use the money as required by Subsection 32B-2-403(2) on the basis of the report filed by the municipality or county under Subsection (1); and

(b) cancel a suspension under Subsection (2)(a).

(3) The State Tax Commission shall notify the advisory council of the balance of any undistributed money after the annual distribution under Subsection 32B-2-404(5).

(4) (a) Subject to the requirements of this Subsection (4), the advisory council shall award the balance of undistributed money under Subsection (3):

(i) as prioritized by majority vote of the advisory council; and

(ii) as grants to:

(A) a county;

(B) a municipality;

(C) the department;

(D) the Department of Human Services;

(E) the Department of Public Safety; or

(F) the Utah State Office of Education.

(b) By not later than May 30 of the fiscal year of the appropriation, the advisory council shall notify the State Tax Commission of grants awarded under this Subsection (4).

(c) The State Tax Commission shall make payments of a grant:

(i) upon receiving notice as provided under Subsection (4)(b); and

(ii) by not later than June 30 of the fiscal year of the appropriation.

(d) An entity that receives a grant under this Subsection (4) shall use the grant money exclusively for programs or projects described in Subsection 32B-2-403(2).

Amended by Chapter 276, 2010 General Session, (Coordination Clause)

Enacted by Chapter 276, 2010 General Session

32B-2-501. Commission's power to establish a state store.

(1) The commission may establish state stores in the numbers and at places, owned or leased by the department, that the commission considers proper for the sale of liquor by employees of the state, in accordance with this title and the rules made under this title.

(2) The commission may not establish a total number of state stores that at any time exceeds the number determined by dividing the population of the state by 48,000.

(3) The commission may not establish a state store at premises that do not meet the proximity requirements of Section 32B-1-202.

(4) An employee of a state store is considered a department employee and shall meet the qualification requirements for employment in Sections 32B-1-303 and 32B-2-207.

(5) (a) The commission shall ensure that signage installed or replaced at or near a state store, on or after May 11, 2010, complies with Subsection (5)(b) if the signage is:

(i) attached to the exterior of the premises of a state store; or

(ii) not attached to the premises of a state store, but otherwise alerts or directs a person to the location of a state store.

(b) Signage described in Subsection (5)(a) shall contain the following words in the size of lettering required by Subsection (5)(c):

(i) "state"; or

(ii) "State of Utah."

(c) The text described in Subsection (5)(b) shall be in lettering that is equal to or larger than the size of any text on the same signage that refers to "liquor" or "wine."

Amended by Chapter 276, 2010 General Session, (Coordination Clause)

Enacted by Chapter 276, 2010 General Session

32B-2-502. Commission and department duties before establishing a state store.

(1) (a) Before the commission may establish a state store, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission to assure appropriate service to the general population of the state.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before establishing a state store, the commission shall:

(a) determine that the local authority of the locality where the state store will be located is consulted;

(b) determine that the state store complies with the zoning ordinances of the locality where the state store will be located;

(c) consider the locality within which the proposed state store will be located including:

(i) economic factors, such as:

(A) bid price;

(B) lease terms;

(C) operating costs; and

(D) local taxes;

(ii) physical characteristics, such as:

(A) condition of the premises;

(B) space availability;

(C) parking;

(D) common areas;

(E) conformance to building and safety codes;

(F) delivery access; and

(G) expandability; and

(iii) operational factors, such as:

(A) tourist traffic;

(B) access to the public;

(C) demographics;

(D) population to be served;

(E) the nature of surrounding establishments;

(F) proximity to and density of other state stores, package agencies, and retail licensees;

(G) proximity to residential communities; and

(H) proximity to educational, religious, and recreational facilities; and

(d) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-2-503. Operational requirements for a state store.

(1) (a) A state store shall display in a prominent place in the store a sign in large letters that consists of text in the following order:

(i) a header that reads: "WARNING";

(ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";

(iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";

(iv) a header that reads: "WARNING"; and

(v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(b) (i) The text described in Subsections (1)(a)(i) through (iii) shall be in a different font style than the text described in Subsections (1)(a)(iv) and (v).

(ii) The warning statements in the sign described in Subsection (1)(a) shall be in the same font size.

(c) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.

(2) A state store may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(3) A state store may not sell, offer for sale, or furnish liquor to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(4) (a) A state store employee may not:

(i) consume an alcoholic product on the premises of a state store; or

(ii) allow any person to consume an alcoholic product on the premises of a state store.

(b) A violation of this Subsection (4) is a class B misdemeanor.

(5) (a) Sale or delivery of liquor may not be made on or from the premises of a state store, and a state store may not be kept open for the sale of liquor:

(i) on Sunday; or

(ii) on a state or federal legal holiday.

(b) Sale or delivery of liquor may be made on or from the premises of a state store, and a state store may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(6) (a) A minor may not be admitted into, or be on the premises of a state store unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) A state store employee that has reason to believe that a person who is on the premises of a state store is under the age of 21 and is not accompanied by a person described in Subsection (6)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanies the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A state store employee shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).

(d) A state store employee shall require a suspected minor and the person who accompanies the suspected minor into the state store to immediately leave the premises of the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).

(7) (a) A state store may not sell, offer for sale, or furnish liquor except in a

sealed container.

(b) A person may not open a sealed container on the premises of a state store.

(8) On or after October 1, 2011, a state store may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-504. Delivery of liquor to state store.

(1) Liquor to be sold from a state store may be transported from a warehouse authorized by the department to the state store if transported by a person authorized by the department to transport the liquor to the state store, including a common carrier.

(2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a container containing liquor.

(3) A person may not drink, use, or allow to be drunk or used, liquor while it is in transit under this section.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-601. Commission's power to issue package agency.

(1) (a) The commission may, when the commission considers proper, issue authority to operate as a package agency by directing the department to enter into a package agency agreement with a person to sell, offer for sale, or furnish liquor in sealed containers from premises other than those owned or leased by the state.

(b) The commission shall authorize a person to operate a package agency by issuing a record that designates the person in charge of the package agency as a "package agent."

(2) (a) Subject to this Subsection (2), the commission may not issue a total number of package agencies that at any time exceeds the number determined by dividing the population of the state by 18,000.

(b) (i) The commission may issue a seasonal package agency in an area the commission considers proper.

(ii) A seasonal package agency shall be for a period of six consecutive months.

(iii) A seasonal package agency issued for operation during a summer time period is known as a "Seasonal A" package agency. The period of operation for a Seasonal A package agency shall:

(A) begin on May 1; and

(B) end on October 31.

(iv) A seasonal package agency issued for operation during a winter time period is known as a "Seasonal B" package agency. The period of operation for a Seasonal B package agency shall:

(A) begin on November 1; and

(B) end on April 30.

(v) In determining the number of package agencies that the commission may issue under this section:

(A) a seasonal package agency is counted as one-half of one package agency;
and

(B) each Seasonal A package agency shall be paired with a Seasonal B package agency.

(c) (i) If the location, design, and construction of a hotel may require more than one package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) all locations under the package agency are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the package agent.

(ii) A facility other than a hotel shall have a separate package agency for each location where liquor may be sold, offered for sale, or furnished.

(3) (a) A package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent this title and the rules relate to the conduct of the package agency and a package agency's sale of liquor.

(b) A package agent may not be a state employee. A package agent may not be construed to be a state employee or otherwise entitled to any benefit of employment from the state.

(c) A package agent, when selling liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement.

(4) The commission may prescribe by rule one or more types of package agencies issued under this part that are consistent with this title.

Amended by Chapter 307, 2011 General Session

32B-2-602. Application requirements for a package agency.

(1) Before a person may store, sell, offer for sale, or furnish liquor in a sealed container on its premises under a package agency, the person shall first obtain a package agency issued by the commission in accordance with this part.

(2) To obtain a package agency, a person seeking to be the package agent under this part shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable application fee of \$125;

(c) written consent of the local authority;

(d) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;

(e) a bond as specified by Section 32B-2-604;

(f) a floor plan of the premises, including a description and highlighting of that part of the premises in which the person proposes that the package agency be located;

(g) evidence that the package agency is carrying public liability insurance in an amount and form satisfactory to the department;

(h) a signed consent form stating that the package agent permits any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the package agency;

(i) if the person applying is an entity, verification that a person who signs the package agency application is authorized to sign on behalf of the entity; and

(j) any other information the commission or department may require.

(3) The commission may not issue a package agency to a person who is disqualified under Section 32B-1-304.

(4) The commission may not issue a package agency for premises that do not meet the proximity requirements of Section 32B-1-202.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-603. Commission and department duties before issuing a package agency.

(1) (a) Before the commission may issue a package agency, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission to assure appropriate service to the general population of the state.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a package agency, the commission shall:

(a) determine that the person filed a complete application and is in compliance with Section 32B-2-602;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) determine that the package agency premises complies with the zoning ordinances of the locality where the package agency will be located;

(d) consider the locality within which the proposed package agency will be located, including:

(i) physical characteristics, such as:

(A) condition of the premises;

(B) square footage;

(C) parking; and

(D) delivery access; and

(ii) operational factors, such as:

(A) tourist traffic;

(B) access to the public;

(C) demographics;

(D) population to be served;

(E) the nature of surrounding establishments;

(F) proximity to and density of other state stores, package agencies, and retail licensees;

(G) proximity to residential communities; and

(H) the extent of and proximity to educational, religious, and recreational

facilities;

(e) consider the person's ability to manage and operate a package agency, including:

(i) management experience;

(ii) past retail liquor experience;

(iii) the type of establishment or business in which the package agency may be located;

(iv) hours of operation; and

(v) ability to maintain inventory levels as set by the department; and

(f) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-2-604. Bond related to package agency.

(1) (a) A package agent who has a consignment liquor inventory owned by the state shall post a consignment surety bond payable to the department in the amount of the consignment inventory.

(b) A consignment surety bond shall be conditioned upon a package agent's return of the unsold consignment liquor inventory at the termination of a package agency agreement.

(2) (a) A package agent that owns the package agency's liquor inventory shall post a cash bond or surety bond:

(i) in the penal amount fixed by the department, except that the penal amount shall be at least \$1,000; and

(ii) payable to the department.

(3) A package agent shall procure and maintain the bond required under this section for as long as the package agent continues to operate as a package agent.

(4) A bond required under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the package agent's faithful compliance with this title, the rules of the commission, and the package agency agreement.

(5) (a) If a surety bond posted by a package agency under this section is canceled due to the package agent's or package agency's negligence, the department may assess a \$300 reinstatement fee.

(b) No part of a bond posted by a package agent under this section may be withdrawn:

(i) during the period the package agency is in effect; or

(ii) while a revocation of the package agency is pending against the package agent.

(6) (a) A bond posted under this section by a package agent may be forfeited if the package agency is revoked.

(b) Notwithstanding Subsection (6)(a), the department may make a claim against a bond posted by a package agent for money owed the department under this title without the commission first revoking the package agency.

Amended by Chapter 307, 2011 General Session

32B-2-605. Operational requirements for package agency.

(1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department.

(b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.

(ii) An action against a package agent is governed solely by its package agency agreement and may include suspension or revocation of the package agency.

(iii) A package agency agreement shall provide procedures to be followed if a package agent fails to pay money owed to the department including a procedure for replacing the package agent or operator of the package agency.

(iv) A package agency agreement shall provide that the package agency is subject to covert investigations for selling an alcoholic product to a minor.

(v) Notwithstanding that this part refers to "package agency" or "package agent," staff of the package agency or package agent is subject to the same requirement or prohibition.

(2) (a) A package agency shall be operated by an individual who is either:

(i) the package agent; or

(ii) an individual designated by the package agent.

(b) An individual who is a designee under this Subsection (2) shall be:

(i) an employee of the package agent; and

(ii) responsible for the operation of the package agency.

(c) The conduct of the designee is attributable to the package agent.

(d) A package agent shall submit the name of the person operating the package agency to the department for the department's approval.

(e) A package agent shall state the name and title of a designee on the application for a package agency.

(f) A package agent shall:

(i) inform the department of a proposed change in the individual designated to operate a package agency; and

(ii) receive prior approval from the department before implementing the change described in this Subsection (2)(f).

(g) Failure to comply with the requirements of this Subsection (2) may result in the immediate termination of a package agency agreement.

(3) (a) A package agent shall display in a prominent place in the package agency the record issued by the commission that designates the package agency.

(b) A package agent that displays or stores liquor at a location visible to the public shall display in a prominent place in the package agency a sign in large letters that consists of text in the following order:

(i) a header that reads: "WARNING";

(ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";

(iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";

- (iv) a header that reads: "WARNING"; and
- (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.
- (d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.
- (4) A package agency may not display liquor or a price list in a window or showcase that is visible to passersby.
- (5) (a) A package agency may not purchase liquor from a person except from the department.
- (b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.
- (6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package agent first applies for and receives approval from the department for a change of location within the package agency premises.
- (7) A package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.
- (8) A package agency may not sell, offer for sale, or furnish liquor to:
 - (a) a minor;
 - (b) a person actually, apparently, or obviously intoxicated;
 - (c) a known interdicted person; or
 - (d) a known habitual drunkard.
- (9) (a) A package agency may not employ a minor to handle liquor.
- (b) (i) Staff of a package agency may not:
 - (A) consume an alcoholic product on the premises of a package agency; or
 - (B) allow any person to consume an alcoholic product on the premises of a package agency.
- (ii) Violation of this Subsection (9)(b) is a class B misdemeanor.
- (10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:
 - (i) the package agency notifies the department in writing at least seven days before the closing; and
 - (ii) the closure or cessation of operation is first approved by the department.
- (b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.
- (c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.
- (ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.
- (iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.
- (d) The notice required by Subsection (10)(a) shall include:

- (i) the dates of closure or cessation of operation;
 - (ii) the reason for the closure or cessation of operation; and
 - (iii) the date on which the package agency will reopen or resume operation.
- (e) Failure of a package agency to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic termination of the package agency agreement effective immediately.
- (f) Failure of a package agency to reopen or resume operation by the approved date results in an automatic termination of the package agency agreement effective on that date.
- (11) A package agency may not transfer its operations from one location to another location without prior written approval of the commission.
- (12) (a) A person, having been issued a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to another person, whether for monetary gain or not.
- (b) A package agency has no monetary value for any type of disposition.
- (13) (a) Subject to the other provisions of this Subsection (13):
- (i) sale or delivery of liquor may not be made on or from the premises of a package agency, and a package agency may not be kept open for the sale of liquor:
 - (A) on Sunday; or
 - (B) on a state or federal legal holiday.
 - (ii) Sale or delivery of liquor may be made on or from the premises of a package agency, and a package agency may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.
- (b) A package agency located at a manufacturing facility is not subject to Subsection (13)(a) if:
- (i) the package agency is located at a manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act;
 - (ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, holds:
 - (A) a full-service restaurant license;
 - (B) a limited-service restaurant license;
 - (C) a beer-only restaurant license; or
 - (D) dining club license;
 - (iii) the restaurant or dining club is located at the manufacturing facility;
 - (iv) the restaurant or dining club sells an alcoholic product produced at the manufacturing facility;
 - (v) the manufacturing facility:
 - (A) owns the restaurant or dining club; or
 - (B) operates the restaurant or dining club;
 - (vi) the package agency only sells an alcoholic product produced at the manufacturing facility; and
 - (vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant or dining club.
- (c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if the package agent that holds the package agency to sell liquor at the resort does not sell liquor in a manner similar to a state store.

(ii) The commission may by rule define what constitutes a package agency that sells liquor "in a manner similar to a state store."

(14) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of a package agency unless accompanied by a person who is:

- (i) 21 years of age or older; and
- (ii) the minor's parent, legal guardian, or spouse.

(b) A package agent or staff of a package agency that has reason to believe that a person who is on the premises of a package agency is under the age of 21 and is not accompanied by a person described in Subsection (14)(a) may:

- (i) ask the suspected minor for proof of age;
- (ii) ask the person who accompanies the suspected minor for proof of age; and
- (iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A package agent or staff of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in Subsection (14)(b).

(d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).

(15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed container.

(b) A person may not open a sealed container on the premises of a package agency.

(c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or furnish liquor in other than a sealed container:

- (i) if the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish the liquor as part of room service;
- (ii) if the liquor is sold, offered for sale, or furnished as part of room service; and
- (iii) subject to:

(A) staff of the package agency providing the liquor in person only to an adult guest in the guest room;

(B) staff of the package agency not leaving the liquor outside a guest room for retrieval by a guest; and

(C) the same limits on the portions in which an alcoholic product may be sold by a retail licensee under Section 32B-5-304.

(16) On or after October 1, 2011, a package agency may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

(17) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.

(18) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:

- (a) physical facilities;
- (b) conditions of operation;

- (c) hours of operation;
- (d) inventory levels;
- (e) payment schedules;
- (f) methods of payment;
- (g) premises security; and
- (h) any other matter considered appropriate by the commission.

Amended by Chapter 365, 2012 General Session

32B-2-606. Delivery of liquor to package agency.

(1) Liquor to be sold from a package agency may be transported from a warehouse or state store authorized by the department to the package agency if transported by a person authorized by the department to transport the liquor to the package agency, including a common carrier.

(2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a container containing liquor.

(3) A person may not drink, use, or allow to be drunk or used, any liquor while the liquor is in transit under this section.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-607. Return of inventory by package agent.

A package agent shall immediately return to the department liquor previously received from the department on consignment that remains unsold at the time the package agent's package agency agreement terminates or the liquor is subject to immediate seizure by the department.

Enacted by Chapter 276, 2010 General Session

32B-3-101. Title.

This chapter is known as the "Disciplinary Actions and Enforcement Act."

Enacted by Chapter 276, 2010 General Session

32B-3-102. Definitions.

As used in this chapter, "final adjudication" means an adjudication for which a final judgment or order is issued that:

- (1) is not appealed, and the time to appeal the judgment has expired; or
- (2) is appealed, and is affirmed, in whole or in part, on appeal.

Enacted by Chapter 276, 2010 General Session

32B-3-201. Nature of adjudicative proceedings under title.

(1) An adjudicative proceeding under this title, including a disciplinary proceeding, is a civil action, notwithstanding whether at issue in the adjudicative

proceeding is a violation of statute that can be prosecuted criminally.

(2) Unless specifically adopted in this title, a procedure or principal that is applicable to a criminal proceeding does not apply to an adjudicative proceeding permitted under this title including:

- (a) Title 76, Chapter 1, General Provisions;
- (b) Title 76, Chapter 2, Principles of Criminal Responsibility;
- (c) Title 76, Chapter 3, Punishments; and
- (d) Title 76, Chapter 4, Inchoate Offenses.

(3) (a) The burden of proof in an adjudicative proceeding under this title is by a preponderance of the evidence.

(b) If the subject of an adjudicative proceeding under this title asserts an affirmative defense, the subject has the burden of proof to establish the affirmative defense by the preponderance of the evidence.

(4) In an adjudicative proceeding under this title, to find a violation of this title the commission:

(a) is required to determine whether the conduct that constitutes the violation occurred; and

(b) is not required to make a finding of knowledge or intent unless knowledge or intent is expressly made an element of the violation by statute.

Enacted by Chapter 276, 2010 General Session

32B-3-202. Timing of reporting violations.

Except when the person subject to administrative action is staff:

(1) A disciplinary proceeding may not be initiated or maintained by the commission or department on the basis, in whole or in part, of a violation of this title unless a person subject to administrative action against whom the violation is alleged is notified by the department of the violation in accordance with this section.

(2) (a) A nondepartment enforcement agency or nondepartment enforcement officer may not report a violation of this title to the department more than eight business days after the day on which a nondepartment enforcement officer or agency completes an investigation that finds a violation of this title.

(b) If the commission or department wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged in a report described in Subsection (2)(a), the department shall notify a person subject to administrative action who is alleged by the report to have violated this title:

(i) by no later than eight business days of the day on which the department receives the report described in Subsection (2)(a); and

(ii) that the commission or department may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.

(3) If the commission or department wants the right to initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of a violation of this title alleged by a report of a department compliance officer, the department shall notify a person subject to administrative action who is alleged by the report to have violated this title:

(a) by no later than eight business days of the day on which the department compliance officer completes an investigation that finds a violation of this title; and

(b) that the commission or department may initiate or maintain a disciplinary proceeding on the basis, in whole or in part, of the violation.

(4) (a) A notice required by this section may be done orally, if after the oral notification the department provides written notification.

(b) The written notification described in Subsection (4)(a) may be sent outside the time periods required by this section.

(5) The department shall maintain a record of a notification required by this section that includes:

(a) the name of the person notified; and

(b) the date of the notification.

Enacted by Chapter 276, 2010 General Session

32B-3-203. Initiating a disciplinary proceeding.

Subject to Section 32B-3-202:

(1) The department may initiate a disciplinary proceeding described in Subsection (2) if the department receives:

(a) a report from an investigator alleging that a person subject to administrative action violated this title or the rules of the commission;

(b) a final adjudication of criminal liability against a person subject to administrative action on the basis of an alleged violation of this title; or

(c) a final adjudication of civil liability in accordance with Chapter 15, Alcoholic Product Liability Act, against a person subject to administrative action on the basis of an alleged violation of this title.

(2) If the condition of Subsection (1) is met, the department may initiate a disciplinary proceeding to determine:

(a) whether a person subject to administrative action violated this title or rules of the commission; and

(b) if a violation is found, the appropriate sanction to be imposed.

(3) (a) Unless waived by the respondent, a disciplinary proceeding shall be held:

(i) if required by law;

(ii) before revoking or suspending a license, permit, or certificate of approval issued under this title; or

(iii) before imposing a fine against a person subject to administrative action.

(b) Inexcusable failure of a respondent to appear at a scheduled disciplinary proceeding hearing after receiving proper notice is an admission of the charged violation.

(c) The validity of a disciplinary proceeding is not affected by the failure of a person to attend or remain in attendance.

Amended by Chapter 369, 2012 General Session

32B-3-204. Disciplinary proceeding procedure.

(1) (a) Subject to Section 32B-3-202, the following may conduct an adjudicative proceeding to inquire into a matter necessary and proper for the administration of this title and rules adopted under this title:

- (i) the commission;
- (ii) a hearing examiner appointed by the commission to conduct a suspension, non-renewal, or revocation hearing required by law;
- (iii) the director; and
- (iv) the department.

(b) Except as provided in this section or Section 32B-2-605, a person described in Subsection (1)(a) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

(c) Except when otherwise provided by law, an adjudicative proceeding before the commission or a hearing examiner appointed by the commission shall be:

- (i) video or audio recorded; and
- (ii) subject to Subsection (3)(b), conducted in accordance with Title 52, Chapter 4, Open and Public Meetings Act.

(d) A person listed in Subsection (1)(a) shall conduct an adjudicative proceeding concerning departmental personnel in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures made by the commission, director, or department.

(2) (a) Subject to Section 32B-3-202, a disciplinary proceeding shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on a disciplinary matter.

(b) (i) The commission may appoint a necessary officer, including a hearing examiner, from within or without the department, to administer the disciplinary proceeding process.

(ii) A hearing examiner appointed by the commission:

(A) may conduct a disciplinary proceeding hearing on behalf of the commission; and

(B) shall submit to the commission a report including:

(I) findings of fact determined on the basis of a preponderance of the evidence presented at the hearing;

(II) conclusions of law; and

(III) recommendations.

(iii) A report of a hearing examiner under this Subsection (2)(b) may not recommend a penalty more severe than that initially sought by the department in the notice of agency action.

(iv) A copy of a hearing examiner report under this Subsection (2)(b) shall be served upon the respective parties.

(v) Before final commission action, the commission shall give a respondent and the department reasonable opportunity to file a written objection to a hearing examiner report.

(3) (a) The commission or an appointed hearing examiner shall preside over a disciplinary proceeding hearing.

(b) A disciplinary proceeding hearing may be closed only after the commission or hearing examiner makes a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order.

(c) (i) The commission or its hearing examiner as part of a disciplinary proceeding hearing may:

- (A) administer an oath or affirmation;
- (B) take evidence;
- (C) take a deposition within or without this state; and
- (D) require by subpoena from a place within this state:
 - (I) the testimony of a person at a hearing; and
 - (II) the production of a record or other evidence considered relevant to the inquiry.

(ii) A person subpoenaed in accordance with this Subsection (3)(c) shall testify and produce a record or tangible thing as required in the subpoena.

(iii) A witness subpoenaed, called to testify, or called to produce evidence who claims a privilege against self-incrimination may not be compelled to testify, but the commission or the hearing examiner shall file a written report with the county attorney or district attorney in the jurisdiction where the privilege is claimed or where the witness resides setting forth the circumstance of the claimed privilege.

(iv) (A) A person is not excused from obeying a subpoena without just cause.

(B) A district court within the judicial district in which a person alleged to be guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon application by the party issuing the subpoena, may issue an order requiring the person to:

- (I) appear before the issuing party; and
- (II) (Aa) produce documentary evidence if so ordered; or
- (Bb) give evidence regarding the matter in question.

(C) Failure to obey an order of the court may be punished by the court as contempt.

(d) In a case heard by the commission, the commission shall issue its final decision and order in accordance with Subsection (2).

(4) (a) The commission shall:

- (i) render a final decision and order on a disciplinary action; and
- (ii) cause its final order to be prepared in writing, issued, and served on all parties.

(b) An order of the commission is final on the date the order is issued.

(c) The commission, after the commission renders its final decision and order, may require the director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(5) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by the commission or a hearing examiner appointed by the commission shall proceed formally in accordance with Sections 63G-4-204 through 63G-4-209 if:

(i) the alleged violation poses, or potentially poses, a grave risk to public safety, health, and welfare;

(ii) the alleged violation involves:

- (A) selling or furnishing an alcoholic product to a minor;
- (B) attire, conduct, or entertainment prohibited by Chapter 1, Part 5, Attire, Conduct, and Entertainment Act;

(C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on

behalf of the respondent;

(D) interfering or refusing to cooperate with:

(I) an authorized official of the department or the state in the discharge of the official's duties in relation to the enforcement of this title; or

(II) a peace officer in the discharge of the peace officer's duties in relation to the enforcement of this title;

(E) an unlawful trade practice under Chapter 4, Part 7, Trade Practices Act;

(F) unlawful importation of an alcoholic product; or

(G) unlawful supply of liquor by a liquor industry member, as defined in Section 32B-4-702, to a person other than the department or a military installation, except to the extent permitted by this title; or

(iii) the department determines to seek in a disciplinary proceeding hearing:

(A) an administrative fine exceeding \$3,000;

(B) a suspension of a license, permit, or certificate of approval of more than 10 days; or

(C) a revocation of a license, permit, or certificate of approval.

(b) If a respondent does not request a disciplinary proceeding hearing, a hearing shall proceed informally unless it is designated as a formal proceeding pursuant to rules adopted by the commission in accordance with Subsection (5)(c).

(c) The commission shall make rules to provide a procedure to implement this Subsection (5).

(6) (a) If the department recommends nonrenewal of a license, the department shall notify the licensee of the recommendation at least 15 days before the commission takes action on the nonrenewal.

(b) Notwithstanding Subsection (2), the commission shall appoint a hearing examiner to conduct an adjudicative hearing in accordance with this section if the licensee files a request for a hearing within 10 days of receipt of the notice under Subsection (6)(a).

Amended by Chapter 365, 2012 General Session

32B-3-205. Penalties.

(1) If the commission is satisfied that a person subject to administrative action violates this title or the commission's rules, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the commission may:

(a) suspend or revoke the person's license, permit, or certificate of approval;

(b) subject to Subsection (2), impose a fine against the person, including individual staff of a licensee, permittee, or certificate holder;

(c) assess the administrative costs of a disciplinary proceeding to the person if the person is a licensee, permittee, or certificate holder; or

(d) take a combination of actions described in this Subsection (1).

(2) (a) A fine imposed may not exceed \$25,000 in the aggregate for:

(i) a single notice of agency action; or

(ii) a single action against a package agency.

(b) The commission shall by rule establish a schedule setting forth a range of fines for each violation.

(3) The commission shall transfer the costs assessed under this section into the General Fund in accordance with Section 32B-2-301.

(4) (a) If a license or permit is suspended under this section, the licensee or permittee shall prominently display a sign provided by the department:

(i) during the suspension; and

(ii) at the entrance of the premises of the licensee or permittee.

(b) The sign required by this Subsection (4) shall:

(i) read "The Utah Alcoholic Beverage Control Commission has suspended the alcoholic product license or permit of this establishment. An alcoholic product may not be sold, offered for sale, furnished, or consumed on these premises during the period of suspension."; and

(ii) include the dates of the suspension period.

(c) A licensee or permittee may not remove, alter, obscure, or destroy a sign required to be displayed under this Subsection (4) during the suspension period.

(5) (a) If a license or permit is revoked, the commission may order the revocation of a bond posted by the licensee or permittee under this title.

(b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a licensee or permittee for money owed the department under this title without the commission first revoking the license or permit.

(6) A licensee or permittee whose license or permit is revoked may not reapply for a license or permit under this title for three years from the date on which the license or permit is revoked.

(7) If a staff member of a licensee, permittee, or certificate holder is found to have violated this title, in addition to imposing another penalty authorized by this title, the commission may prohibit the staff member from handling, selling, furnishing, distributing, manufacturing, wholesaling, or warehousing an alcoholic product in the course of acting as staff with a licensee, permittee, or certificate holder under this title for a period determined by the commission.

(8) (a) If the commission makes the finding described in Subsection (8)(b), in addition to other penalties prescribed by this title, the commission may order:

(i) the removal of an alcoholic product of the manufacturer's, supplier's, or importer's from the department's sales list; and

(ii) a suspension of the department's purchase of an alcoholic product described in Subsection (8)(a)(i) for a period determined by the commission.

(b) The commission may take the action described in Subsection (8)(a) if:

(i) a manufacturer, supplier, or importer of liquor or its staff or representative violates this title; and

(ii) the manufacturer, supplier, or importer:

(A) directly commits the violation; or

(B) solicits, requests, commands, encourages, or intentionally aids another to engage in the violation.

(9) If the commission makes a finding that the brewer holding a certificate of approval violates this title or rules of the commission, the commission may take an action against the brewer holding a certificate of approval that the commission could take against a licensee including:

(a) suspension or revocation of the certificate of approval; and

(b) imposition of a fine.

(10) Notwithstanding the other provisions of this title, the commission may not order a disciplinary action or fine in accordance with this section if the disciplinary action or fine is ordered on the basis of a violation:

(a) of a provision in this title related to intoxication or becoming intoxicated; and

(b) if the violation is first investigated by a law enforcement officer, as defined in Section 53-13-103, who has not received training regarding the requirements of this title related to responsible alcoholic product sale or service.

Enacted by Chapter 276, 2010 General Session

32B-3-206. Dishonored checks.

(1) If a check issued in payment of a fee or cost authorized or required by this title is returned to the department as dishonored:

(a) the department may assess a service charge in an amount set by commission rule against the person on whose behalf the check was tendered;

(b) if the check that is returned to the department is from a package agent, licensee, or permittee, the commission may:

(i) suspend or revoke the license or permit; or

(ii) suspend or terminate the operation of the package agency;

(c) the department may require that the person who paid with the dishonored check only pay money owed to the department under this title with cash for the time period determined by the department; or

(d) the department or commission may take a combination of actions as provided in this Subsection (1).

(2) (a) If a license or permit is revoked under this section, the commission may require the forfeiture of the bond of the licensee or permittee.

(b) Notwithstanding Subsection (2)(a), the department may make a claim against a bond posted by a licensee or permittee for money owed the department under this title without the commission first revoking the license or permit.

(3) (a) If the operation of a package agency is terminated under this section and the department has posted a bond for the package agency, the commission may require the forfeiture of the bond.

(b) Notwithstanding Subsection (3)(a), the department may make a claim against a bond posted for a package agency without the commission first terminating the operation of the package agency.

Enacted by Chapter 276, 2010 General Session

32B-3-207. Judicial review -- Enforcement.

(1) In a disciplinary proceeding, a respondent found in a final order of the commission to have violated this title or rules of the commission made under this title may seek judicial review in a court of competent jurisdiction pursuant to the judicial review provisions of Sections 63G-4-401 through 63G-4-405.

(2) Notwithstanding Subsection 63G-4-403(4)(g), an appellate court may not grant relief on the basis that a finding of fact by the commission in a formal disciplinary

proceeding is not supported, if the commission's finding of fact is supported by any evidence of substance in the record of the formal disciplinary proceeding when viewed in light of the whole record before the court.

(3) In addition to another remedy provided by law, the commission may seek enforcement of a commission order in a disciplinary proceeding by seeking civil enforcement in a state district court in accordance with Section 63G-4-501.

Enacted by Chapter 276, 2010 General Session

32B-3-301. Title.

This part is known as the "Nuisance Retail Licensee Act."

Enacted by Chapter 276, 2010 General Session

32B-3-302. Definitions.

As used in this part:

(1) "Nuisance activity" means:

(a) a judicial finding that a licensed establishment is a nuisance under Section 32B-4-208; or

(b) an act described in Section 32B-3-303.

(2) "Objecting governmental entity" means:

(a) a local government entity;

(b) a prosecutor's office; or

(c) a law enforcement agency.

Enacted by Chapter 276, 2010 General Session

32B-3-303. Acts making a person subject to this part.

(1) One or more of the following acts constitute a nuisance activity:

(a) a single felony conviction within the last two years of:

(i) a retail licensee; or

(ii) supervisory or managerial level staff of the retail licensee;

(b) a single conviction under Title 58, Chapter 37, Utah Controlled Substances

Act:

(i) (A) of a retail licensee; or

(B) staff of the retail licensee;

(ii) within the last two years; and

(iii) made on the basis of an act that occurs on the licensed premises;

(c) three or more convictions of patrons of a retail licensee under Title 58, Chapter 37, Utah Controlled Substances Act, if:

(i) the convictions are made on the basis of an act that occurs on the licensed premises; and

(ii) there is evidence that the retail licensee knew or should have known of the illegal activity;

(d) a single conviction within the last two years of a retail licensee or staff of the retail licensee that is made on the basis of:

- (i) pornographic and harmful materials:
 - (A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances; and
 - (B) if the violation occurs on the licensed premises;
- (ii) prostitution;
- (iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;
- (iv) having any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;
- (v) on the licensed premises engaging in or permitting a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value;
- (vi) a disturbance of the peace that occurs on the licensed premises; or
- (vii) disorderly conduct that occurs on the licensed premises; or
- (e) three or more adjudicated violations of this title within the last two years by a retail licensee or by staff of the retail licensee that result in a criminal citation or an administrative referral to the department relating to:
 - (i) the sale, offer for sale, or furnishing of an alcoholic product to a minor;
 - (ii) the sale, offer for sale, or furnishing of an alcoholic product to a person actually, apparently, or obviously intoxicated;
 - (iii) the sale, offer for sale, or furnishing of an alcoholic product after the lawful hours for the sale or furnishing; or
 - (iv) acts or conduct on the licensed premises contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title.
- (2) For purposes of Subsection (1), in the case of a retail licensee that is a partnership, corporation, or limited liability company, a conviction under Subsection (1)(c) includes a conviction of any of the following for an offense described in Subsection (1)(c):
 - (a) a partner;
 - (b) a managing agent;
 - (c) a manager;
 - (d) an officer;
 - (e) a director;
 - (f) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate retail licensee; or
 - (g) a member who owns at least 20% of a limited liability company retail licensee.

Amended by Chapter 307, 2011 General Session

32B-3-304. Rulemaking.

In accordance with this chapter, the commission may make rules that govern the filing under this chapter of:

- (1) a formal objection to the renewal of a retail license; and

- (2) a request for hearing filed by a retail licensee.

Enacted by Chapter 276, 2010 General Session

**32B-3-305. Commission to prohibit nuisance activity by licensee --
License not renewed.**

(1) In accordance with Section 32B-1-104, the commission shall require a retail licensee as a condition of being licensed under this title to operate in a manner so as not to endanger the public health, peace, safety, welfare, or morals of the community.

(2) (a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, and Sections 32B-3-306 and 32B-3-307, the commission may deny the renewal of a retail license if:

- (i) a formal objection to the renewal is filed; and
- (ii) the commission determines that the retail licensee has engaged in a nuisance activity to such an extent that the nuisance activity has adversely impacted the public health, peace, safety, welfare, or morals of the neighboring community of the licensed premises.

(b) In making a determination under this Subsection (2), the commission may consider:

- (i) the type of nuisance activity in which a retail licensee engages;
- (ii) the frequency or pattern of the nuisance activity; and
- (iii) the retail licensee's notice of and failure to abate or correct the nuisance activity.

Enacted by Chapter 276, 2010 General Session

32B-3-306. Formal objections to renewal.

(1) The department shall notify governmental entities that in accordance with this part an objecting governmental entity may file with the commission an objection to the renewal of a retail licensee's license in the objecting governmental entity's community.

(2) The department or an objecting governmental entity may file with the commission a formal objection to a retail license being renewed by the commission if the formal objection:

- (a) is filed on the basis of a nuisance activity;
- (b) is filed no later than 60 days before the expiration date of the retail licensee's license; and
- (c) states with particularity all relevant facts and circumstances relating to the nuisance activity that forms the basis for the formal objection.

Enacted by Chapter 276, 2010 General Session

32B-3-307. Hearing on formal objections to renewal.

(1) Upon receipt of a formal objection that meets the requirements of Section 32B-3-306, the department shall:

- (a) issue a notice of agency action; and

(b) serve on the retail licensee no later than 30 days before the expiration of the retail licensee's license:

- (i) the notice of agency action; and
- (ii) a copy of the formal objection.

(2) (a) A retail licensee against whom a notice of agency action is served under Subsection (1) may request a hearing.

(b) The request for hearing described in Subsection (2)(a) shall be:

- (i) in writing; and
- (ii) filed with the commission within 10 days of the day on which the notice of agency action is served on the retail licensee.

(c) If a retail licensee fails to file a request for hearing in accordance with this Subsection (2), the commission may not renew the license of the retail licensee.

(3) (a) Upon receipt of a request for hearing meeting the requirements of Subsection (2), the department shall immediately schedule a hearing that shall be:

- (i) held no later than 10 days before the expiration date of the retail licensee's license; and
- (ii) electronically recorded by the department.

(b) The retail licensee or an objecting governmental entity, at its own expense, may have a reporter approved by the department prepare a transcript from the department's record of the hearing.

(c) (i) The department shall present information at the hearing that supports a finding that a nuisance activity occurred.

(ii) The information described in Subsection (3)(c)(i) shall be made a part of the record of the hearing.

(d) A retail licensee shall:

(i) have the opportunity to challenge or explain whether any of the nuisance activity that forms the basis for the formal objection occurred; and

(ii) be permitted to:

- (A) testify;
- (B) present evidence; and
- (C) comment on the issues at the hearing.

(4) (a) A hearing held under this part shall be conducted under the authority of the commission.

(b) The commission is responsible for rendering a final order on whether a retail licensee's license shall be renewed.

(c) Notwithstanding Subsections (4)(a) and (b), the commission may appoint a necessary hearing examiner to administer the hearing process.

(d) The commission or the hearing examiner appointed by the commission shall serve as the presiding officer at a hearing held under this section.

(e) The presiding officer at a hearing held under this section:

(i) shall evaluate:

(A) the information presented at the hearing in support of the formal objection; and

(B) any explanation and evidence offered by the retail licensee; and

(ii) may consider such factors as:

(A) the length of time the retail licensee has operated the licensed premises;

(B) the condition of the licensed premises;
(C) whether the retail licensee knew or should have known of the nuisance activity in question;
(D) whether the retail licensee failed to:
(I) make a substantial effort to correct the nuisance activity; and
(II) work with law enforcement to curtail the nuisance activity;
(E) whether the nuisance activity has been ongoing or temporary;
(F) whether the retail licensee or the retail licensee's staff:
(I) initiated contact with the law enforcement agency on the nuisance activity;

and

(II) cooperated with the law enforcement agency's investigation; and
(G) whether prior efforts to stop the nuisance activity by the community or the retail licensee have been unsuccessful.

(5) An order issued under this section shall:
(a) be based on the evidence presented at the hearing; and
(b) state whether:
(i) the continued operation of the licensed premises will endanger the public health, peace, safety, welfare, or morals of the community; and
(ii) the retail license should or should not be renewed.
(6) (a) If the presiding officer is a hearing examiner appointed by the commission, the hearing officer shall issue a signed order in writing that:
(i) complies with Subsection (5);
(ii) recommends to the commission whether the retail license should or should not be renewed;
(iii) states the reasons for the hearing officer's decision; and
(iv) notifies the retail licensee and the objecting governmental entity that the hearing examiner's order will be considered by the commission at the next regularly scheduled meeting of the commission.

(b) The department shall promptly mail a copy of the hearing examiner's order to:

(i) the retail licensee; and
(ii) any objecting governmental entity.
(c) The commission at its next regularly scheduled meeting after receipt of a hearing examiner's order, shall decide whether to renew or not renew the retail license on the basis of:

(i) the record and evidence presented at the hearing; and
(ii) the hearing examiner's recommendation.
(7) (a) As an alternative to ordering that a retail license not be renewed under this section, the commission may conditionally renew a retail license by requiring that:
(i) the retail licensee and the licensed premises be closely monitored during the licensing year by:
(A) the department;
(B) local government officials; and
(C) law enforcement; and
(ii) the matter be reviewed before the next renewal period.
(b) The commission may conditionally renew a retail license contingent on a

person listed in Subsection (7)(b)(ii) divesting all interest in the retail licensed business if:

(i) the retail licensee is a partnership, corporation, or limited liability company;
and

(ii) the formal objection filed under this section if filed solely on the basis of a felony conviction:

(A) of:

(I) a partner;

(II) a managing agent;

(III) a manager;

(IV) an officer;

(V) a director;

(VI) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate licensee; or

(VII) a member who owns at least 20% of a limited liability company licensee;
and

(B) for illegal activity that occurred off of the licensed premises.

(8) (a) In accordance with this section, the commission shall issue a written order setting forth the commission's decision and the reason for the commission's decision.

(b) The order described in Subsection (8)(a) is considered final on the date the order becomes effective.

(c) The department shall serve a copy of the order on the retail licensee.

(9) A retail licensee whose retail license is not renewed by order of the commission may seek judicial review under the procedures provided in Section 32B-3-207.

(10) A retail licensee whose retail license is not renewed may not reapply for a license under this title for three years from the date the retail license is not renewed.

Amended by Chapter 307, 2011 General Session

32B-4-101. Title.

This chapter is known as the "Criminal Offenses and Procedure Act."

Enacted by Chapter 276, 2010 General Session

32B-4-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-4-201. Applicability of Utah Code of Criminal Procedure.

Except as otherwise provided in this title, the procedure in a criminal case arising under this title is governed by Title 77, Utah Code of Criminal Procedure, and any other rules adopted by the Utah Supreme Court.

Enacted by Chapter 276, 2010 General Session

32B-4-202. Duties to enforce this title.

(1) It is the duty of the following to diligently enforce this title in their respective capacities:

- (a) the governor;
- (b) a commissioner;
- (c) the director;
- (d) an official, inspector, or department employee;
- (e) a prosecuting official of the state or its political subdivisions;
- (f) a county, city, or town;
- (g) a peace officer, sheriff, deputy sheriff, constable, marshal, or law enforcement official;
- (h) a state health official; and
- (i) a clerk of the court.

(2) Immediately upon conviction of a person for violation of this title or of a local ordinance relating to an alcoholic product, it is the duty of the clerk of the court to notify the department of the conviction in writing on forms supplied by the department.

Enacted by Chapter 276, 2010 General Session

32B-4-203. Authority to inspect.

- (1) (a) This Subsection (1) applies to:
- (i) a commissioner;
 - (ii) an authorized representative of the commission or department; or
 - (iii) a law enforcement or peace officer.
- (b) An individual described in Subsection (1)(a):
- (i) shall be given access, ingress, and egress to and from premises or a conveyance used in the storage, sale, furnishing, manufacture, or transportation of an alcoholic product;
 - (ii) may open a container containing, or supposed to contain, an article sold, or exposed for sale, held in possession, or manufactured with intent to sell in violation of this title or commission rules; and
 - (iii) may inspect the contents and take samples of the contents for analysis from a container described in this Subsection (1).
- (2) The following shall assist, when requested by a person described in Subsection (1), in tracing, finding, or discovering the presence of an article prohibited by this title or commission rules to the extent assistance would not infringe upon the person's federal and state constitutional rights:
- (a) a dealer;
 - (b) a clerk;
 - (c) a bookkeeper;
 - (d) an express agent;
 - (e) a railroad or airline official;
 - (f) a common or other carrier; and
 - (g) an employee of a person listed in this Subsection (2).

Amended by Chapter 307, 2011 General Session
Amended by Chapter 334, 2011 General Session

32B-4-204. Arrests.

- (1) Except as otherwise provided in this chapter, an arrest of a person for a violation of this title shall be made in accordance with:
- (a) Title 77, Chapter 7, Arrest, by Whom, and How Made; and
 - (b) Rules 6 and 7, Utah Rules of Criminal Procedure.
- (2) A summons in lieu of a warrant of arrest shall be in accordance with Rule 6, Utah Rules of Criminal Procedure.

Enacted by Chapter 276, 2010 General Session

32B-4-205. Prosecutions.

- (1) (a) A prosecution for a violation of this title shall be in the name of the state.
(b) A criminal action for violation of a county or municipal ordinance enacted in furtherance of this title shall be in the name of the governmental entity involved.
- (2) (a) A prosecution for violation of this title shall be brought by the county attorney of the county or district attorney of the prosecution district where the violation occurs. If a county attorney or district attorney fails to initiate or diligently pursue a prosecution authorized and warranted under this title, the attorney general shall exercise supervisory authority over the county attorney or district attorney to ensure prosecution is initiated and diligently pursued.
(b) If a violation occurs within a city or town, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of a city attorney.
(c) A city or town prosecutor has the responsibility of initiating and diligently pursuing prosecutions for a violation of a local ordinance enacted in furtherance of this title or commission rules.
- (3) (a) A prosecution for a violation of this title shall be commenced by the return of an indictment or the filing of an information with the district court of the county in which the offense occurs or where the premises are located upon which an alcoholic product is seized, if the offense involves an alcoholic product.
(b) An offense prescribed by this title that is not described in Subsection (3)(a) shall be filed before a court having jurisdiction of the offense committed.
- (4) (a) Unless otherwise provided by law, an information may not be filed charging the commission of a felony or class A misdemeanor under this title unless authorized by a prosecuting attorney.
(b) This Subsection (4) does not apply if the magistrate has reasonable cause to believe that the person to be charged may avoid apprehension or escape before approval can be obtained.
- (5) (a) In describing an offense respecting the sale, keeping for sale, or other disposal of an alcoholic product, or the possessing, keeping, purchasing, consumption, or giving of an alcoholic product in an information, indictment, summons, judgment, warrant, or proceeding under this title, it is sufficient to state the possessing,

purchasing, keeping, sale, keeping for sale, giving, consumption, or disposal of the alcoholic product without stating:

- (i) the name or kind of alcoholic product;
- (ii) the price of the alcoholic product;
- (iii) any person to whom the alcoholic product is sold or disposed of;
- (iv) by whom the alcoholic product is taken or consumed; or
- (v) from whom the alcoholic product is purchased or received.

(b) It is not necessary to state the quantity of alcoholic product possessed, purchased, kept, kept for sale, sold, given, consumed, or disposed of, except in the case of an offense when the quantity is essential, and then it is sufficient to allege the sale or disposal of more or less than the quantity.

(6) If an offense is committed under a local ordinance enacted to carry out this title, it is sufficient if the charging document refers to the chapter and section of the ordinance under which the offense is committed.

Enacted by Chapter 276, 2010 General Session

32B-4-206. Disposition of fines and forfeitures.

Except when otherwise provided, a fine or forfeiture levied under this title shall be paid to the county treasurer of the county in which the prosecution occurred.

Amended by Chapter 394, 2013 General Session

32B-4-207. Right of appeal.

In a case arising under this title, the commission or the state has the right of appeal as to a question of law.

Enacted by Chapter 276, 2010 General Session

32B-4-208. Nuisances.

(1) As used in this section, "nuisance" means:

(a) a room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance where an alcoholic product is possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated in violation of this title; or

(b) an alcoholic product, container, equipment, or other property kept or used in maintaining an item or property described in Subsection (1)(a).

(2) A person who maintains or assists in maintaining a nuisance is guilty of a class B misdemeanor.

(3) If a person has knowledge that, or has reason to believe that the person's room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or used as a nuisance, or allows it to be occupied or used as a nuisance, the nuisance property is subject to a lien for and may be sold to pay the fines and costs assessed against the person guilty of the common nuisance. This lien may be enforced by action in a court having jurisdiction.

(4) (a) The department shall bring an action to abate a nuisance in the name of

the department in a court having jurisdiction.

(b) An action brought under this Subsection (4) is an action in equity.

(c) The department may not be required to post a bond to initiate an action under this Subsection (4).

(d) A court may issue:

(i) if it appears that a nuisance exists, a temporary writ of injunction restraining the defendant from conducting or permitting the continuance of the nuisance until the conclusion of the trial; and

(ii) an order restraining the defendant and any other person from removing or interfering with an alcoholic product, container, equipment, or other property kept or used in violation of this title or commission rules.

(e) In an action to abate or enjoin a nuisance, the court need not find that the property involved is being unlawfully used at the time of the hearing.

(f) On finding that a material allegation of a petition or complaint is true, the court shall order that an alcoholic product may not be possessed, purchased, used, kept, stored, sold, offered for sale, furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated, in any portion of the room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance.

(g) Upon judgment of a court ordering abatement of the nuisance, the court may order that the premises or conveyance in question may not be occupied or used for any purpose for one year, except under Subsection (4)(h).

(h) A court may permit premises or conveyance described in Subsection (4)(g) to be occupied or used:

(i) if its owner, lessee, tenant, or occupant gives bond in an appropriate amount with sufficient surety, approved by the court, payable to the state;

(ii) on the condition that an alcoholic product will not be present in or on the premises or the conveyance; and

(iii) on the condition that payment of the fines, costs, and damages assessed for violation of this title or commission rules will be made.

(5) If a tenant of the premises uses the premises or any part of the premises in maintaining a nuisance, or knowingly permits use by another, the lease is void and the right to possession reverts to the owner or lessor who is entitled to the remedy provided by law for forcible detention of the premises.

(6) A person is guilty of assisting in maintaining a nuisance as provided in Section 76-10-804, if that person:

(a) knowingly permits a building or premises owned or leased by the person, or under the person's control, or any part of a building or premises, to be used in maintaining a nuisance; or

(b) after being notified in writing by a prosecutor or other citizen of the unlawful use, fails to take all proper measures to:

(i) abate the nuisance; or

(ii) remove the one or more persons from the premises.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-4-209. Lawful detention.

(1) (a) To inform a peace officer of a suspected violation and subject to the requirements of Subsection (1)(c), a person described in Subsection (1)(b) may:

- (i) detain a person; and
- (ii) hold any form of identification presented by the person.

(b) The following may take an action described in Subsection (1)(a):

- (i) a state store employee;
- (ii) a package agent;
- (iii) a licensee or permittee;
- (iv) a beer retailer; or
- (v) staff of a person described in Subsections (1)(b)(ii) through (iv).

(c) A person described in Subsection (1)(b) may take an action described in Subsection (1)(a) only:

(i) if that person has reason to believe that the person against whom the action is taken is:

- (A) in a facility where liquor or beer is sold; and
- (B) in violation of Section 32B-4-409, 32B-4-412, or 32B-4-413;
- (ii) in a reasonable manner; and
- (iii) for a reasonable length of time.

(2) Unless the detention is unreasonable under all circumstances, the detention or failure to detain does not create criminal or civil liability for:

- (a) false arrest;
- (b) false imprisonment;
- (c) slander; or
- (d) unlawful detention.

Enacted by Chapter 276, 2010 General Session

32B-4-301. Applicability of Utah Criminal Code.

Except as otherwise provided, Title 76, Chapters 1, 2, 3, and 4, apply to the prosecution of a criminal offense defined in this chapter or expressly identified as a criminal offense in this title.

Enacted by Chapter 276, 2010 General Session

32B-4-302. Criminal responsibility for conduct of another.

In addition to Title 76, Chapter 2, Part 2, Criminal Responsibility for Conduct of Another, the following principles apply to a violation of this title:

(1) (a) If a violation of this title is committed by a person in the employ of the occupant of premises in which the offense is committed, or by a person who is required by the occupant to be or remain in or upon the premises, or to act in any way for the occupant, notwithstanding the fact that the offense is committed by a person who is not proved to have committed it under or by the direction of the occupant, the occupant is:

- (i) prima facie considered a party to the offense committed; and
 - (ii) liable as a principal offender.
- (b) This section does not relieve the person actually committing the offense from

liability.

(2) (a) If a violation of this title is committed by a corporation, association, partnership, or limited liability company, an officer or agent of the corporation or association, a partner of the partnership, or a manager or member of the limited liability company in charge of the premises in which the offense is committed is:

(i) prima facie considered a party to the offense committed; and
(ii) personally liable to the penalties prescribed for the offense as a principal offender.

(b) This section does not relieve the corporation, association, partnership, or limited liability company, or the person who actually committed the offense from liability.

Enacted by Chapter 276, 2010 General Session

32B-4-303. Special burdens of proof -- Inferences and presumptions.

(1) In a prosecution of an offense defined in this title or in a proceeding brought to enforce this title:

(a) it is not necessary that the state or commission establish:

(i) the precise description or quantity of an alcoholic product; or
(ii) the precise consideration, if any, given or received for an alcoholic product;

(b) there is an inference, absent proof to the contrary, that an alcoholic product in question is an alcoholic product if the witness describes it:

(i) as an alcoholic product;
(ii) by a name that is commonly applied to an alcoholic product; or
(iii) as intoxicating;

(c) if it is alleged that an entity for which a record is required to be filed with the Division of Corporations and Commercial Code to be organized or conduct business in this state has violated this title, the fact of the entity is presumed absent proof to the contrary;

(d) a record signed or purporting to be signed by a state chemist, assistant state chemist, or state crime laboratory chemist, as to the analysis or ingredients of an alcoholic product is:

(i) prima facie evidence:
(A) of the facts stated in that record; and
(B) of the authority of the person giving or making the record; and
(ii) admissible in evidence without proof of appointment or signature absent

proof to the contrary; and

(e) a copy of an entry made in a record of the United States internal revenue collector, certified by the collector or a qualified notary public, showing the payment of the United States internal revenue special tax for the manufacture or sale of an alcoholic product is prima facie evidence of the manufacture or sale by the party named in the entry within the period set forth in the record.

(2) (a) In proving the unlawful purchase, sale, gift, or disposal, gratuitous or otherwise, or consumption of an alcoholic product, it is not necessary that the state or commission establish that money or other consideration actually passed or that an alcoholic product is actually consumed if the court or trier of fact is satisfied that:

(i) a transaction in the nature of a purchase, sale, gift, or disposal actually

occurs; or

(ii) consumption of an alcoholic product is about to occur.

(b) Proof of consumption or intended consumption of an alcoholic product on premises on which consumption is prohibited, by some person not authorized to consume an alcoholic product on those premises, is evidence that an alcoholic product is sold, given to, or purchased by the person consuming, about to consume, or carrying away the alcoholic product as against the occupant of the premises.

(3) For purposes of a provision applicable under this chapter to a retail licensee or staff of a retail licensee, the provision is applicable to a resort licensee or a person operating under a sublicense of the resort licensee.

(4) Notwithstanding the other provisions of this chapter, a criminal offense identified in this title as a criminal offense may not be enforced under this chapter if the criminal offense relates to a violation:

(a) of a provision in this title related to intoxication or becoming intoxicated; and

(b) if the violation is first investigated by a law enforcement officer, as defined in Section 53-13-103, who has not received training regarding the requirements of this title related to responsible alcoholic product sale or furnishing.

Enacted by Chapter 276, 2010 General Session

32B-4-304. Violation of title a misdemeanor.

(1) Unless otherwise provided in this title, a person is guilty of a class B misdemeanor if that person violates:

(a) this chapter; or

(b) a provision of this title that is expressly identified as a criminal offense.

(2) This section is not applicable to an adjudicative proceeding under Chapter 3, Disciplinary Actions and Enforcement Act, but only:

(a) makes a violation described in Subsection (1) a criminal offense; and

(b) establishes a penalty for a violation described in Subsection (1) that is prosecuted criminally.

Enacted by Chapter 276, 2010 General Session

32B-4-305. Additional criminal penalties.

(1) (a) For purposes of this section, "business entity" means a corporation, partnership, association, limited liability company, or similar entity.

(b) In addition to the penalties provided in Title 76, Chapter 3, Punishments, this section applies.

(2) Upon a defendant's conviction of an offense defined in this title, the court may order the defendant to make restitution or pay costs in accordance with Title 77, Chapter 32a, Defense Costs.

(3) (a) Upon a business entity's conviction of an offense defined in this title, and a failure of the business entity to pay a fine imposed upon it:

(i) if it is a domestic business entity, the powers, rights, and privileges of the business entity may be suspended or revoked; and

(ii) if it is a foreign business entity, it forfeits its right to do intrastate business in

this state.

(b) The department shall transmit the name of a business entity described in Subsection (3)(a) to the Division of Corporations and Commercial Code. Upon receipt of the information, the Division of Corporations and Commercial Code shall immediately record the action in a manner that makes the information available to the public.

(c) A suspension, revocation, or forfeiture under this Subsection (3) is effective from the day on which the Division of Corporations and Commercial Code records the information.

(d) A certificate of the Division of Corporations and Commercial Code is prima facie evidence of a suspension, revocation, or forfeiture.

(e) This section may not be construed as affecting, limiting, or restricting a proceeding that otherwise may be taken for the imposition of any other punishment or the modes of enforcement or recovery of fines or penalties.

(4) (a) Upon the conviction of a business entity required to have a business license to operate its business activities, or upon the conviction of any of its staff of any offense defined in this title, with the knowledge, consent, or acquiescence of the business entity, the department shall forward a copy of the judgment of conviction to the appropriate governmental entity responsible for issuing and revoking the business license.

(b) A governmental entity that receives a copy of a judgment under this Subsection (4) may institute appropriate proceedings to revoke the business license.

(c) Upon revocation under this Subsection (4), a governmental entity may not issue a business license to the business entity for at least one year from the date of revocation.

(d) Upon the conviction for a second or other offense, the governmental entity may not issue a business license for at least two years from the date of revocation.

(5) (a) Upon conviction of one of the following of an offense defined in this title, the department shall forward a certified copy of the judgment of conviction to the Division of Occupational and Professional Licensing:

(i) a health care practitioner; or

(ii) an individual licensed as a veterinarian under Title 58, Chapter 28, Veterinary Practice Act.

(b) The Division of Occupational and Professional Licensing may bring a proceeding in accordance with Title 58, Occupations and Professions, to revoke the license issued under Title 58 of an individual described in Subsection (5)(a).

(c) Upon revocation of a license under Subsection (5)(b):

(i) the Division of Occupational and Professional Licensing may not issue a license to the individual under Title 58 for at least one year from the date of revocation; and

(ii) if the individual is convicted of a second or subsequent offense, the Division of Occupational and Professional Licensing may not issue a license to the individual under Title 58 for at least two years from the date of revocation.

Enacted by Chapter 276, 2010 General Session

32B-4-401. Unlawful sale or furnishing.

(1) It is unlawful for a retail licensee, a permittee, or staff of a retail licensee or permittee to keep for sale, or to directly or indirectly, sell, offer for sale, or furnish to another, an alcoholic product, except as otherwise provided by this title.

(2) It is unlawful for a person in the business of selling liquor, a manufacturer, a supplier, an importer of liquor, or staff of the person, manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported liquor from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (a) the department;
- (b) a military installation;
- (c) a holder of a special use permit, to the extent authorized in the special use permit; or
- (d) a liquor warehouser licensee licensed to distribute and transport liquor to:
 - (i) the department; or
 - (ii) an out-of-state wholesaler or retailer.

(3) (a) It is unlawful for a person in the business of selling beer, a manufacturer, a supplier, an importer of beer, or staff of the person, manufacturer, or importer to sell, ship, transport, or cause to be sold, shipped, or transported beer from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (i) a beer wholesaler licensee;
- (ii) a military installation; or
- (iii) a holder of a special use permit, to the extent authorized in the special use permit.

(b) Subsection (3)(a) does not preclude a small brewer that holds a certificate of approval from selling, shipping, or transporting beer to the extent authorized by Subsection 32B-11-503(5) directly to:

- (i) a beer retailer; or
- (ii) an event permittee.

(4) (a) It is unlawful for a manufacturer, supplier, or importer of liquor in this state, or staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be sold, shipped, or transported liquor directly or indirectly to a person in this state except to the extent authorized by this title to:

- (i) the department;
- (ii) a military installation;
- (iii) a holder of a special use permit, to the extent authorized in the special use permit; or
- (iv) a liquor warehouser licensee who is licensed to distribute and transport liquor to:

- (A) the department; or
- (B) an out-of-state wholesaler or retailer.

(b) Subsection (4)(a) does not preclude a winery manufacturing licensee located in this state from selling wine to a person on its winery premises:

- (i) to the extent authorized by Subsection 32B-11-303(4)(c); or
- (ii) under a package agency issued by the commission on the winery premises.

(5) (a) It is unlawful for a manufacturer, supplier, or importer of beer in this state, or staff of the manufacturer, supplier, or importer to sell, ship, transport, or cause to be

sold, shipped, or transported beer directly or indirectly to a person in this state except to the extent authorized by this title to:

- (i) a beer wholesaler licensee;
- (ii) a military installation; or
- (iii) a holder of a special use permit, to the extent authorized in the special use permit.

(b) Subsection (5)(a) does not preclude:

- (i) a small brewer who is a brewery manufacturing licensee located in this state from selling, shipping, and transporting beer to the extent authorized by Subsection 32B-11-503(5) directly to one of the following in this state:

- (A) a beer retailer; or

- (B) an event permittee; or

- (ii) a brewery manufacturing licensee from selling beer to a person on its manufacturing premises under Subsection 32B-11-503(4)(c).

(6) It is unlawful for a person other than a person described in Subsection (2) or (3) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product from an out-of-state location directly or indirectly into this state, except as otherwise provided by this title.

(7) It is unlawful for a person in this state other than a person described in Subsection (4) or (5) to sell, ship, transport, or cause to be sold, shipped, or transported an alcoholic product directly or indirectly to another person in this state, except as otherwise provided by this title.

(8) (a) A violation of Subsection (1) is a class B misdemeanor, except when otherwise provided by this title.

- (b) A violation of Subsection (2), (3), (4), or (5) is a third degree felony.

- (c) A violation of Subsection (6) or (7) is a class B misdemeanor.

Enacted by Chapter 276, 2010 General Session

32B-4-402. Unauthorized sale, offer for sale, or furnishing.

A person authorized by this title to sell an alcoholic product and staff of that person may not sell, offer for sale, or furnish, an alcoholic product in any place, or at any day or time other than as authorized by this title or the rules of the commission.

Enacted by Chapter 276, 2010 General Session

32B-4-403. Unlawful sale, offer for sale, or furnishing to minor.

(1) A person may not sell, offer for sale, or furnish an alcoholic product to a minor.

(2) (a) (i) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if the person who violates Subsection (1) negligently or recklessly fails to determine whether the recipient of the alcoholic product is a minor.

- (ii) As used in this Subsection (2)(a), "negligently" means with simple negligence.

- (b) Except as provided in Subsection (3), a person is guilty of a class A misdemeanor if the person who violates Subsection (1) knows the recipient of the

alcoholic product is a minor.

(3) This section does not apply to the furnishing of an alcoholic product to a minor in accordance with this title:

(a) for medicinal purposes by:

(i) the parent or guardian of the minor; or

(ii) the health care practitioner of the minor, if the health care practitioner is authorized by law to write a prescription; or

(b) as part of a religious organization's religious services.

Enacted by Chapter 276, 2010 General Session

32B-4-404. Unlawful sale, offer for sale, or furnishing to intoxicated person.

(1) A person may not sell, offer for sale, or furnish an alcoholic product to:

(a) a person who is actually or apparently intoxicated; or

(b) a person whom the person furnishing the alcoholic product knows or should know from the circumstances is actually or apparently intoxicated.

(2) (a) A person who negligently or recklessly violates Subsection (1) is guilty of a class B misdemeanor.

(b) A person who knowingly violates Subsection (1) is guilty of a class A misdemeanor.

(3) As used in Subsection (2)(a), "negligently" means with simple negligence.

Enacted by Chapter 276, 2010 General Session

32B-4-405. Unlawful sale, offer for sale, or furnishing to interdicted person.

(1) A person may not sell, offer for sale, or furnish an alcoholic product to a known interdicted person.

(2) This section does not apply to the sale, offer for sale, or furnishing of an alcoholic product to an interdicted person:

(a) under an order of a health care practitioner who is authorized by law to write a prescription; or

(b) administered by a hospital or health care practitioner authorized by law to administer the alcoholic product for medicinal purposes.

Enacted by Chapter 276, 2010 General Session

32B-4-406. Unlawful sale, offer for sale, or furnishing of an alcoholic product.

(1) Except as provided in Subsection (2):

(a) a person may not sell, offer for sale, or furnish beer to the general public in a container that exceeds two liters; and

(b) a person may not purchase or possess beer in a container that exceeds two liters.

(2) (a) A retail licensee may sell, offer for sale, or furnish beer on draft subject to

the requirements of Section 32B-5-304.

(b) A retail licensee may purchase or possess beer in a container that exceeds two liters to be dispensed on draft for consumption subject to the requirements of Section 32B-5-304.

(c) A beer wholesaler licensee may sell, offer for sale, or furnish beer in a container that exceeds two liters to a retail licensee described in Subsection (2)(a).

(3) On or after October 1, 2011:

(a) A person may not sell, offer for sale, or furnish heavy beer in a container that exceeds two liters.

(b) A person may not purchase or possess heavy beer in a container that exceeds two liters.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-4-407. Unlawful sale, offer for sale, or furnishing during emergency.

During a period of emergency proclaimed by the governor to exist in an area of the state, it is unlawful for a person to sell, offer for sale, or furnish an alcoholic product in that area if the director publicly announces and directs that in that area a person may not sell, offer for sale, or furnish an alcoholic product in that area during the period of emergency.

Enacted by Chapter 276, 2010 General Session

32B-4-408. Unlawful purchase or acceptance.

(1) It is unlawful for a person or the person's staff to purchase, take, or accept an alcoholic product from another person, except as provided by this title or the rules of the commission adopted under this title.

(2) An act is unlawful under Subsection (1) if it is taken:

(a) directly or indirectly; or

(b) upon a pretense or device.

Enacted by Chapter 276, 2010 General Session

32B-4-409. Unlawful purchase, possession, consumption by minor -- Measurable amounts in body.

(1) Unless specifically authorized by this title, it is unlawful for a minor to:

(a) purchase an alcoholic product;

(b) attempt to purchase an alcoholic product;

(c) solicit another person to purchase an alcoholic product;

(d) possess an alcoholic product;

(e) consume an alcoholic product; or

(f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

(2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic product for a minor for:

- (a) a minor to misrepresent the minor's age; or
- (b) any other person to misrepresent the age of a minor.
- (3) It is unlawful for a minor to possess or consume an alcoholic product while riding in a limousine or chartered bus.
- (4) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court:
 - (a) shall order the minor to participate in an educational series as defined in Section 41-6a-501; and
 - (b) may order the minor to participate in a screening as defined in Section 41-6a-501.
- (5) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.
- (b) Notwithstanding the provision in Subsection (5)(a), the court may reduce the suspension period required under Section 53-3-219 if:
 - (i) the violation is the minor's first violation of this section; and
 - (ii) the minor completes an educational series as defined in Section 41-6a-501.
- (6) When a minor who is at least 13 years old, but younger than 18 years old, is found by the court to have violated this section, Section 78A-6-606 applies to the violation.
- (7) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.
- (8) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.
- (9) This section does not apply to a minor's consumption of an alcoholic product in accordance with this title:
 - (a) for medicinal purposes if:
 - (i) the minor is at least 18 years old; or
 - (ii) the alcoholic product is furnished by:
 - (A) the parent or guardian of the minor; or
 - (B) the minor's health care practitioner, if the health care practitioner is authorized by law to write a prescription; or
 - (b) as part of a religious organization's religious services.

Enacted by Chapter 276, 2010 General Session

32B-4-410. Unlawful admittance or attempt to gain admittance by minor.

- (1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:
 - (a) a tavern; or
 - (b) a social club licensee, except to the extent authorized by Section 32B-6-406.1.

- (2) A minor who violates this section is guilty of a class C misdemeanor.
- (3) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court:
 - (a) shall order the minor to participate in an educational series as defined in Section 41-6a-501; and
 - (b) may order the minor to participate in a screening as defined in Section 41-6a-501.
- (4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.
 - (b) Notwithstanding the provision in Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:
 - (i) the violation is the minor's first violation of this section; and
 - (ii) the minor completes an educational series as defined in Section 41-6a-501.
- (5) When a minor who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, Section 78A-6-606 applies to the violation.
- (6) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.
- (7) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

Enacted by Chapter 276, 2010 General Session

32B-4-411. Minor's unlawful use of proof of age.

- (1) As used in this section, "proof of age violation" means a violation by a minor of:
 - (a) Chapter 1, Part 4, Proof of Age Act; or
 - (b) if as part of the violation the minor uses a proof of age in violation of Chapter 1, Part 4, Proof of Age Act:
 - (i) Section 32B-4-409; or
 - (ii) Section 32B-4-410.
- (2) If a court finds a minor engaged in a proof of age violation, notwithstanding the penalties provided for in Subsection (1):
 - (a) (i) for a first violation, the minor is guilty of a class B misdemeanor;
 - (ii) for a second violation, the minor is guilty of a class A misdemeanor; and
 - (iii) for a third or subsequent violation, the minor is guilty of a class A misdemeanor, except that the court may impose:
 - (A) a fine of up to \$5,000;
 - (B) screening, assessment, or substance abuse treatment, as defined in Section 41-6a-501;
 - (C) an educational series, as defined in Section 41-6a-501;

(D) alcoholic product related community service or compensatory service work program hours;

(E) fees for restitution and treatment costs;

(F) defensive driver education courses; or

(G) a combination of these penalties; and

(b) (i) for a minor who is at least 13 years old, but younger than 18 years old:

(A) the court shall forward to the Driver License Division a record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under this section; and

(B) the provisions regarding suspension of a driver license under Section 78A-6-606 apply; and

(ii) for a minor who is at least 18 years old, but younger than 21 years old:

(A) the court shall forward to the Driver License Division a record of conviction for a violation under this section; and

(B) the Driver License Division shall suspend the person's license under Section 53-3-220.

(3) When the Department of Public Safety receives the arrest or conviction record of an individual for a driving offense committed while the individual's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

(4) A court may not fail to enter a judgment of conviction under this section under a plea in abeyance agreement.

Enacted by Chapter 276, 2010 General Session

32B-4-412. Unlawful purchase by intoxicated person.

A person may not purchase an alcoholic product if the person is intoxicated.

Enacted by Chapter 276, 2010 General Session

32B-4-413. Unlawful purchase by interdicted person.

A person may not purchase or possess an alcoholic product if that person is an interdicted person, except:

(1) under an order of a health care practitioner who is authorized by law to write a prescription; or

(2) when administered by a hospital or health care practitioner authorized by law to administer the alcoholic product for medicinal purposes.

Enacted by Chapter 276, 2010 General Session

32B-4-414. Unlawful possession -- Exceptions.

(1) A person may not possess liquor within this state unless authorized by this title or the rules of the commission, except that:

(a) a person who clears United States Customs when entering this country may possess for personal consumption and not for sale or resale, a maximum of two liters of liquor purchased from without the United States;

(b) a person who moves the person's residence to this state from outside of this state may possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move, if the person:

(i) obtains department approval before moving the liquor into the state; and
(ii) pays the department a reasonable administrative handling fee as determined by the commission;

(c) a person who inherits liquor as a beneficiary of an estate that is located outside the state, may possess the liquor and transport or cause the liquor to be transported into the state if the person:

(i) obtains department approval before moving the liquor into the state;
(ii) provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary; and
(iii) pays the department a reasonable administrative handling fee as determined by the commission; or

(d) a person may transport or possess liquor if:

(i) the person transports or possesses the liquor:

(A) for personal household use and consumption; and

(B) not for:

(I) sale;

(II) resale;

(III) gifting to another; or

(IV) consumption on premises licensed by the commission;

(ii) the liquor is purchased from a store or facility on a military installation; and

(iii) the maximum amount the person transports or possesses under this

Subsection (1)(d) is:

(A) two liters of:

(I) spirituous liquor;

(II) wine; or

(III) a combination of spirituous liquor and wine; and

(B) (I) one case of heavy beer that does not exceed 288 ounces; or

(II) one case of a flavored malt beverage that does not exceed 288 ounces.

(2) (a) Approval under Subsection (1)(b) may be obtained by a person who:

(i) is transferring the person's permanent residence to this state; or

(ii) maintains separate residences both in and out of this state.

(b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more than one time.

Enacted by Chapter 276, 2010 General Session

32B-4-415. Unlawful bringing onto premises for consumption.

(1) Except as provided in Subsection (4), a person may not bring an alcoholic product for on-premise consumption onto the premises of:

(a) a retail licensee or person required to be licensed under this title as a retail licensee;

(b) an establishment that conducts a business similar to a retail licensee;

(c) an event where an alcoholic product is sold, offered for sale, or furnished under a single event permit or temporary beer event permit issued under this title; or
(d) an establishment open to the general public.

(2) Except as provided in Subsection (4), the following may not allow a person to bring onto its premises an alcoholic product for on-premise consumption or allow consumption of an alcoholic product brought onto its premises in violation of this section:

(a) a retail licensee or a person required to be licensed under this title as a retail licensee;

(b) an establishment that conducts a business similar to a retail licensee;

(c) a single event permittee or temporary beer event permittee;

(d) an establishment open to the general public; or

(e) staff of a person listed in Subsections (2)(a) through (d).

(3) Except as provided in Subsection (4)(c)(i)(A), a person may not consume an alcoholic product in a limousine or chartered bus if the limousine or chartered bus drops off a passenger at a location from which the passenger departs in a private vehicle.

(4) (a) A person may bring bottled wine onto the premises of the following and consume the wine pursuant to Subsection 32B-5-307:

(i) a full-service restaurant licensee;

(ii) a limited restaurant licensee;

(iii) a club licensee; or

(iv) a person operating under a resort spa sublicense.

(b) A passenger of a limousine may bring onto, possess, and consume an alcoholic product on the limousine if:

(i) the travel of the limousine begins and ends at:

(A) the residence of the passenger;

(B) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

(C) the temporary domicile of the passenger; and

(ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department.

(c) A passenger of a chartered bus may bring onto, possess, and consume an alcoholic product on the chartered bus:

(i) (A) but may consume only during travel to a specified destination of the chartered bus and not during travel back to the place where the travel begins; or

(B) if the travel of the chartered bus begins and ends at:

(I) the residence of the passenger;

(II) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

(III) the temporary domicile of the passenger; and

(ii) if the chartered bus has a nondrinking designee other than the driver traveling on the chartered bus to monitor consumption.

(5) A person may bring onto any premises, possess, and consume an alcoholic product at a private event.

(6) The restrictions of Subsections (2) and (3) apply to a resort licensee or person operating under a sublicense in relationship to:

- (a) the boundary of a resort building; or
- (b) a sublicense premises.

Enacted by Chapter 276, 2010 General Session

32B-4-416. Unlawful permitting of consumption by minor.

- (1) A person may not permit a minor to consume an alcoholic product in a chartered bus or limousine of which the person is the owner or operator.
- (2) A violation of Subsection (1) is an infraction.

Enacted by Chapter 276, 2010 General Session

32B-4-417. Unlawful possession by licensee or permittee.

Except as authorized by Section 32B-4-415, other provisions of this title, or the rules of the commission, a licensee or permittee may not possess, store, or allow consumption of liquor on its premises if the liquor is not purchased from:

- (1) the department;
- (2) a state store; or
- (3) a package agency.

Enacted by Chapter 276, 2010 General Session

32B-4-418. Unlawful storage.

It is unlawful for a person to store liquor on premises for which the person is authorized to sell beer for on-premise consumption, but for which the person is not licensed under this title to sell liquor.

Enacted by Chapter 276, 2010 General Session

32B-4-419. Unlawful permitting of intoxication.

- (1) A person may not permit another person to become intoxicated or an intoxicated person to consume an alcoholic product in:
 - (a) premises of which the person is the owner, tenant, or occupant; or
 - (b) a chartered bus or limousine of which the person is the owner or operator.
- (2) A violation of Subsection (1) is a class C misdemeanor.

Enacted by Chapter 276, 2010 General Session

32B-4-420. Unlawful adulteration.

- (1) For purposes of this section, "tamper" means to do one or more of the following to the contents of a container:
 - (a) fortify;
 - (b) adulterate;
 - (c) contaminate;
 - (d) dilute;
 - (e) change its character or purity; or

- (f) otherwise change.
- (2) A person may not, for any purpose, mix or allow to be mixed with an alcoholic product sold or supplied by the person as a beverage any of the following:
 - (a) a drug;
 - (b) methylic alcohol;
 - (c) a crude, unrectified, or impure form of ethylic alcohol; or
 - (d) another deleterious substance.
- (3) (a) The following may not engage in an act listed in Subsection (3)(b):
 - (i) a package agent;
 - (ii) a retail licensee;
 - (iii) a permittee;
 - (iv) a beer wholesaler licensee;
 - (v) a liquor warehouser licensee;
 - (vi) a supplier; or
 - (vii) an importer.
- (b) A person listed in Subsection (3)(a) may not:
 - (i) tamper with the contents of a container of alcoholic product as originally marketed by a manufacturer;
 - (ii) refill or partly refill with any substance the contents of an original container of alcoholic product as originally marketed by a manufacturer;
 - (iii) misrepresent the brand of an alcoholic product sold or offered for sale; or
 - (iv) sell or furnish a brand of alcoholic product that is not the same as that ordered by a purchaser without first advising the purchaser of the difference.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-4-421. Unlawful consumption in public place.

- (1) A person may not consume liquor in a public building, park, or stadium, except as provided by this title.
- (2) A violation of this section is a class C misdemeanor.

Enacted by Chapter 276, 2010 General Session

32B-4-422. Unlawful dispensing.

- (1) For purposes of this section:
 - (a) "Primary spirituous liquor" means the main distilled spirit in a beverage.
 - (b) "Primary spirituous liquor" does not include a secondary alcoholic product used as a flavoring in conjunction with the primary distilled spirit in a beverage.
- (2) A retail licensee licensed under this title to sell, offer for sale, or furnish spirituous liquor for consumption on the licensed premises, or staff of the retail licensee may not:
 - (a) sell, offer for sale, or furnish a primary spirituous liquor to a person on the licensed premises except in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department;

- (b) sell, offer for sale, or furnish more than a total of 2.5 ounces of spirituous liquor per beverage;
- (c) allow a person on the licensed premises to have more than a total of 2.5 ounces of spirituous liquor at a time; or
- (d) (i) except as provided in Subsection (2)(d)(ii), allow a person to have more than two spirituous liquor beverages at a time; or
- (ii) allow a person on the premises of the following to have more than one spirituous liquor beverage at a time:
 - (A) a full-service restaurant licensee;
 - (B) a person operating under a full-service restaurant sublicense;
 - (C) an on-premise banquet licensee;
 - (D) a person operating under an on-premise banquet sublicense; or
 - (E) a single event permittee.
- (3) A violation of this section is a class C misdemeanor.

Amended by Chapter 307, 2011 General Session

32B-4-423. Immunity regarding alcohol consumption offenses when seeking emergency aid for another person.

(1) A law enforcement officer may not cite or arrest a person solely because of a person's violation of a provision under Subsection (2) if the officer came into contact with the person because:

- (a) the person had requested or acted in concert with another person to request emergency medical assistance for a third party who reasonably appeared to be in need of medical care due to the consumption of alcohol;
- (b) the officer was responding to the request for emergency medical assistance;
- (c) the person provided to the officer the person's name and identifying information as requested by the officer;
- (d) the person remained at the location where the third party was located until emergency medical response personnel arrived at the location; and
- (e) the person cooperated with the emergency medical assistance personnel and law enforcement officers at the location.

(2) Offenses referred to in Subsection (1) are violations of:

- (a) Section 32B-4-403 regarding the unlawful sale, offer for sale, or furnishing of alcohol to a minor;
- (b) Subsection 32B-4-409(1) regarding the unlawful purchase, possession, or consumption of alcohol by a minor; and
- (c) Subsection 76-9-701(1) regarding intoxication when the offense involves consumption of alcohol.

(3) An officer who declines to cite or arrest a person while acting in good faith under Subsection (1) is not civilly liable.

Enacted by Chapter 169, 2013 General Session

32B-4-501. Operating without a license or permit.

(1) A person may not operate the following businesses without first obtaining a

license under this title if the business allows a person to purchase or consume an alcoholic product on the premises of the business:

- (a) a restaurant;
- (b) an airport lounge;
- (c) a business operated in the same manner as a club licensee;
- (d) a resort;
- (e) a business operated to sell, offer for sale, or furnish beer for on-premise consumption;
- (f) a business operated as an on-premise banquet licensee; or
- (g) a business similar to one listed in Subsections (1)(a) through (f).

(2) A person conducting an event that is open to the general public may not directly or indirectly sell, offer for sale, or furnish an alcoholic product to a person attending the event without first obtaining an event permit under this title.

(3) A person conducting a private event may not directly or indirectly sell or offer for sale an alcoholic product to a person attending the private event without first obtaining an event permit under this title.

(4) A person may not operate the following businesses in this state without first obtaining a license under this title:

- (a) a winery manufacturer;
- (b) a distillery manufacturer;
- (c) a brewery manufacturer;
- (d) a local industry representative of:
 - (i) a manufacturer of an alcoholic product;
 - (ii) a supplier of an alcoholic product; or
 - (iii) an importer of an alcoholic product;
- (e) a liquor warehouser; or
- (f) a beer wholesaler.

(5) A person may not operate a public conveyance in this state without first obtaining a public service permit under this title if that public conveyance allows a person to purchase or consume an alcoholic product:

- (a) on the public conveyance; or
- (b) on the premises of a hospitality room located within a depot, terminal, or similar facility at which a service is provided to a patron of the public conveyance.

Enacted by Chapter 276, 2010 General Session

32B-4-502. Storing or possessing pursuant to federal stamp.

(1) Except as otherwise provided by this title, it is unlawful for a person who holds a stamp issued by the Bureau of Internal Revenue of the United States as a retail dealer in fermented malt liquor, or the person's operator or staff, to possess, hold, or store liquor in or on premises described in the stamp while the stamp remains in effect unless that person is:

- (a) acting for the commission; or
- (b) licensed under this title.

(2) This section may not be construed to prevent a person from possessing and consuming, but not storing, liquor on premises described by the fermented malt liquor

stamp, if that person is not:

- (a) an owner or operator of a retail dealer described in Subsection (1); or
- (b) a staff member of either the owner or operator.

Enacted by Chapter 276, 2010 General Session

32B-4-503. Tampering with a record.

(1) It is unlawful for a person who has custody of a record required to be filed or deposited with the commission or the department under this title to:

(a) steal, falsify, alter, willfully destroy, mutilate, deface, remove, or conceal in whole or in part that record; or

(b) knowingly permit another person to take an action described in Subsection (1)(a).

(2) (a) Except as provided in Subsection (2)(b), a person is guilty of a class B misdemeanor.

(b) A person who violates Subsection (1) is guilty of a third degree felony if that person is a commissioner, the director, or a department employee.

Enacted by Chapter 276, 2010 General Session

32B-4-504. Making false statements.

(1) (a) A person who makes a false material statement under oath or affirmation in an official proceeding before the commission or the department is guilty of a second degree felony.

(b) As used in Subsection (1)(a), "material" statement is as defined in Section 76-8-501.

(2) A person is guilty of a class B misdemeanor if that person knowingly:

(a) makes a false statement under oath or affirmation in an official proceeding before the commission or the department;

(b) makes a false statement with a purpose to mislead a public servant in performing that public servant's official functions under this title;

(c) makes a false statement and the statement is required by this title to be sworn or affirmed before a notary or other person authorized to administer oaths;

(d) makes a false written statement on or pursuant to a record required by this title;

(e) creates a false impression in a record required by this title by omitting information necessary to prevent a statement in them from being misleading;

(f) makes a false written statement with intent to deceive a public servant in the performance of that public servant's official functions under this title; or

(g) submits or invites reliance on a record required under this title which that person knows to lack authenticity.

(3) A person is not guilty under Subsection (2) if that person retracts the falsification before it becomes apparent that the falsification is or will be exposed.

Enacted by Chapter 276, 2010 General Session

32B-4-505. Obstructing a search, official proceeding, or investigation.

(1) A person who is in the premises or has charge over premises may not refuse or fail to admit to the premises or obstruct the entry of any of the following who demands entry when acting under this title:

- (a) a commissioner;
- (b) an authorized representative of the commission or department; or
- (c) a law enforcement officer.

(2) A person who is in the premises or has charge of the premises may not interfere with any of the following who is conducting an investigation under this title at the premises:

- (a) a commissioner;
- (b) an authorized representative of the commission or department; or
- (c) a law enforcement officer.

(3) A person is guilty of a second degree felony if, believing that an official proceeding or investigation is pending or about to be instituted under this title, that person:

(a) alters, destroys, conceals, or removes a record with a purpose to impair its verity or availability in the proceeding or investigation; or

(b) makes, presents, or uses anything that the person knows to be false with a purpose to deceive any of the following who may be engaged in a proceeding or investigation under this title:

- (i) a commissioner;
- (ii) an authorized representative of the commission or department;
- (iii) a law enforcement officer; or
- (iv) other person.

Enacted by Chapter 276, 2010 General Session

32B-4-508. Offering or soliciting bribe, gift, or profits.

(1) If a person sold, sells, offered for sale, or offers to sell an alcoholic product to the commission or department, that person may not offer, make, tender, or in any way deliver or transfer to a commissioner, the director, a department employee, or a law enforcement officer responsible for the enforcement of this title the following:

- (a) a bribe;
- (b) a gift, as defined in Section 67-16-5; or
- (c) a share of profits.

(2) A commissioner, the director, a department employee, or a law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any of the following from a person who sold, sells, offered for sale, or offers to sell an alcoholic product:

- (a) a commission;
- (b) compensation, as defined in Section 67-16-3;
- (c) a gift, as defined in Section 67-16-5; or
- (d) a loan.

(3) A violation of this section is punishable under Section 67-16-12.

Enacted by Chapter 276, 2010 General Session

32B-4-509. Forgery.

(1) (a) A person who with a purpose to defraud the commission or the department, or who with knowledge that the person is facilitating a fraud to be perpetrated by anyone, forges a record required under this title, is guilty of forgery as provided under Section 76-6-501.

(b) A violation of Subsection (1)(a) is a second degree felony.

(2) A person who with intent to defraud the commission or the department knowingly possesses a record that is a forgery as defined in Section 76-6-501 is guilty of a third degree felony.

Enacted by Chapter 276, 2010 General Session

32B-4-601. Unlawful removal from conveyance or diversion of shipment.

(1) It is unlawful for a person transporting an alcoholic product, including a motor carrier, in interstate or other commerce intended for, or consigned to, or claimed to be intended for or consigned to a person outside of this state, to remove or to permit a person to remove the alcoholic product or any part of the alcoholic product from the conveyance in which it is carried while within this state.

(2) Notwithstanding Subsection (1), removal of an alcoholic product from a conveyance may be allowed if the person described in Subsection (1) notifies the department in writing at least 24 hours before the intended removal and complies with the instructions given by the department.

(3) It is unlawful for a person to receive for storage or another purpose, or to possess an alcoholic product, that is removed from a vehicle or other conveyance in violation of this section.

(4) It is unlawful for a person, including a motor vehicle, to divert to any place within this state, or to deliver to any person in this state, an alcoholic product that is consigned for shipment to any place without this state, unless the person:

(a) first notifies the department in writing at least 24 hours before the intended diversion or delivery; and

(b) complies with the instructions given by the department.

(5) Upon receiving a notice under Subsection (2) or (4), the department shall take precautions as necessary to ensure compliance with the laws of this state relating to an alcoholic product.

Enacted by Chapter 276, 2010 General Session

32B-4-602. Unlawful transportation.

(1) It is unlawful for a person, including a motor carrier, or staff of the person to order or purchase an alcoholic product or to cause an alcoholic product to be shipped, carried, or transported into this state, or from one place to another within this state except as otherwise authorized by this title.

(2) This section does not prohibit a person, including a motor carrier, from:

(a) transporting an alcoholic product in the course of export from the state; or

(b) transporting an alcoholic product across any part of this state while in transit pursuant to a bona fide consignment of the alcoholic product to a person outside of this state.

Enacted by Chapter 276, 2010 General Session

32B-4-603. Carriers' records.

(1) (a) A person, including a motor carrier, transporting an alcoholic product into or within this state shall make and maintain a record in which is entered, immediately on the receipt of an alcoholic product:

- (i) the name of every person to whom the alcoholic product is consigned;
- (ii) the amount and kind of alcoholic product received; and
- (iii) the date when the alcoholic product is delivered.

(b) (i) Except as provided in Subsection (1)(b)(ii), a consignee shall sign the consignee's name.

(ii) If the consignee is a corporation, partnership, or limited liability company, an agent authorized in writing shall sign the record described in Subsection (1)(a).

(2) A person described in Subsection (1) shall make the record open to inspection by an authorized official of the state or local authority at any time during the person's business hours.

(3) A record under this section constitutes prima facie evidence of the facts stated in the record and is admissible as evidence in a court proceeding to enforce this title.

Enacted by Chapter 276, 2010 General Session

32B-4-701. Title.

This part is known as the "Trade Practices Act."

Enacted by Chapter 276, 2010 General Session

32B-4-702. Definitions.

As used in this part:

(1) (a) For purposes of Section 32B-4-703, "exclusion" is as defined in 27 C.F.R. Sec. 8.51 through 8.54.

(b) For purposes of Section 32B-4-704, "exclusion" is as defined in 27 C.F.R. Sec. 6.151 through 6.153.

(2) (a) "Industry member" means:

- (i) an alcoholic product manufacturer;
- (ii) a producer;
- (iii) a supplier;
- (iv) an importer;
- (v) a wholesaler;
- (vi) a bottler;
- (vii) a warehouser and bottler; or
- (viii) for a person described in Subsections (2)(a)(i) through (vii), any of its:

- (A) affiliates;
- (B) subsidiaries;
- (C) officers;
- (D) directors;
- (E) partners;
- (F) agents;
- (G) employees; or
- (H) representatives.
- (b) "Industry member" does not include:
 - (i) the commission;
 - (ii) a commissioner;
 - (iii) the director;
 - (iv) the department; or
 - (v) a department employee.
- (3) "Product" means an alcoholic product or item associated with an alcoholic product.
- (4) "Retailer" means:
 - (a) the holder of a license or permit issued by the commission or by a local authority to allow the holder to engage in the sale of an alcoholic product to a patron whether for consumption on or off the premises; or
 - (b) an agent, officer, director, shareholder, partner, or employee of a holder described in Subsection (4)(a).

Enacted by Chapter 276, 2010 General Session

32B-4-703. Exclusive outlets.

- (1) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to require, by agreement or otherwise, that the department or a retailer purchase a product from the industry member or the department to the exclusion in whole or in part of a product that is sold or offered for sale by another person.
- (2) (a) Subsection (1) applies only to a transaction between:
 - (i) one or more industry members; and
 - (ii) (A) the department; or
 - (B) one or more retailers.
- (b) Subsection (1) does not apply to a transaction between two or more industry members, including between a manufacturer and a wholesaler.
- (3) Subsection (1) includes purchases coerced by an industry member through an act or threat of physical or economic harm, as well as through a voluntary industry member-retailer purchase agreement.
- (4) (a) Subsection (1) includes a contract or agreement, written or unwritten, that has the effect of requiring the department or retailer to purchase an alcoholic product from the industry member beyond a single sales transaction.
- (b) Examples of a contract or agreement described in Subsection (4)(a) include:
 - (i) an advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's product; or
 - (ii) a sales contract awarded on a competitive bid basis that has the effect of

prohibiting the department or retailer from purchasing from another industry member by:

(A) requiring that the retailer purchase a product or line of products exclusively from the industry member for the period of the agreement; or

(B) requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.

(5) (a) Subsection (1) includes a contract, agreement, or other arrangement between an industry member and a third party nonretailer that requires the department or a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person.

(b) This Subsection (5) applies whether a contract, agreement, or other arrangement originates with the industry member or the third party.

(c) Examples of a contract, agreement, or other arrangement described in this Subsection (5) include:

(i) a contract, agreement, or arrangement:

(A) with a third party, such as a ball club or municipal or private corporation, that is not a retailer;

(B) under which the third party leases the concession rights and is able to control the purchasing decisions of a retailer; and

(C) that requires the retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person; or

(ii) a contract, agreement, or arrangement with a third party nonretailer that requires a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person in return for which the third party provides a service or other thing of value such as:

(A) sponsoring radio or television broadcasting;

(B) paying for advertising; or

(C) providing other services or things of value.

Enacted by Chapter 276, 2010 General Session

32B-4-704. Tied house -- Prohibitions.

(1) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring or holding an interest in a license with respect to the premises of a retailer, except when the license is held by a retailer that is completely owned by the industry member.

(b) Interest in a retail license includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member.

(c) An interest in a retail license acquired by a separate corporation in which the industry member or the industry member's officials hold ownership or are otherwise affiliated is an interest in a retail license.

(d) Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of Subsection (1)(a).

(2) (a) It is unlawful for an industry member, directly or indirectly, or through an

affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of the retailer's business.

(b) For purposes of Subsection (2)(a):

(i) "interest" does not include complete ownership of a retail business by an industry member;

(ii) interest in retail property includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member;

(iii) any interest in a retail license acquired by a separate corporation in which the industry member or its officials hold ownership or are otherwise affiliated is an interest in the retailer's property;

(iv) less than complete ownership of a retail business by an industry member constitutes an interest in retail property;

(v) the acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property; and

(vi) the renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property.

(3) (a) Subject to Section 32B-4-705, it is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by furnishing, giving, renting, lending, or selling to the retailer equipment, a fixture, a sign, supplies, money, a service, or other thing of value.

(b) (i) For purposes of this Subsection (3), indirect inducement includes:

(A) furnishing a thing of value to a third party when the benefit resulting from the thing of value flows to an individual retailer; and

(B) making a payment for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer.

(ii) Notwithstanding Subsection (3)(b)(i), an indirect inducement does not arise if:

(A) the thing of value is furnished to a retailer by the third party without the knowledge or intent of the industry member; or

(B) the industry member does not reasonably foresee that the thing of value would be furnished to a retailer.

(c) Anything that may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under Section 32B-4-705 may be furnished directly by a third party to a retailer.

(d) (i) A transaction in which equipment is sold to a retailer by an industry member, except as provided in Section 32B-4-705, is the selling of equipment within the meaning of Subsection (3)(a) regardless of how the equipment is sold.

(ii) The negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of Subsection (3)(a).

(e) The furnishing of free warehousing by delaying delivery of an alcoholic product beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period

of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(f) A financial, legal, administrative, or influential assistance given a retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(4) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by paying or crediting the retailer for an advertising, display, or distribution service:

(a) as defined in and to the extent restricted by 27 C.F.R. Sec. 6.51 through 6.56; and

(b) subject to the exceptions:

(i) for newspaper cuts listed in 27 C.F.R. Sec. 6.92; and

(ii) for advertising services listed in 27 C.F.R. Sec. 6.98.

(5) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by guaranteeing a loan or the repayment of a financial obligation of the retailer.

(6) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase beer from the industry member to the exclusion in whole or in part of a beer product sold or offered for sale by another person by extending to a retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge from all indebtedness arising from the transaction by the retailer paying cash or its equivalent, unless:

(i) beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month; and

(ii) beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.

(b) A first party in-state check is considered cash payment if the check is:

(i) honored on presentment; and

(ii) received under the terms prescribed in Subsection (6)(a).

(c) An extension of credit for product purchased by an industry member to a retailer whose account is in arrears does not constitute a violation of Subsection (6)(a) if the retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

(7) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by requiring:

(i) the department to take and dispose of a certain quota of a product; or

(ii) a beer retailer to take and dispose of a certain quota of a beer product.

(b) (i) It is an unlawful means to induce to require:

(A) the department to purchase one product in order to purchase another

product; or

(B) a beer retailer to purchase one beer product in order to purchase another beer product.

(ii) This Subsection (7)(b) includes:

(A) the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium container such as:

(I) a distinctive decanter; or

(II) a wooden or tin box; or

(B) combination sales if one or more products may be purchased only in combination with another product and not individually.

(c) This Subsection (7) does not preclude the selling, at a special combination price, of two or more kinds or brands of products so long as the department or beer retailer:

(i) has the option of purchasing either product at the usual price; and

(ii) is not required to purchase a product the department or beer retailer does not want.

(d) An industry member may package and distribute an alcoholic product in combination with other nonalcoholic items.

(e) A combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department or beer retailer.

Amended by Chapter 307, 2011 General Session

32B-4-705. Exclusions from tied house prohibitions.

(1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an industry member to a retailer under the conditions and within the limitations prescribed in:

(a) this section; and

(b) the applicable federal laws cited in this section.

(2) The following may be furnished by an industry member:

(a) a product display as provided in 27 C.F.R. Sec. 6.83;

(b) point of sale advertising material or a consumer advertising specialty as provided in 27 C.F.R. Sec. 6.84;

(c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;

(d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;

(e) combination packaging as provided in 27 C.F.R. Sec. 6.93;

(f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;

(g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;

(h) an advertising service as provided in 27 C.F.R. Sec. 6.98;

(i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;

(j) merchandise as provided in 27 C.F.R. Sec. 6.101; and

(k) an outside sign as provided in 27 C.F.R. Sec. 6.102.

(3) The following exceptions provided in federal law are not applicable:

(a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
(b) the exception for a consumer tasting or sampling at a retail establishment as provided in 27 C.F.R. Sec. 6.95; and

(c) the exception for participation in a retailer association activity provided in 27 C.F.R. Sec. 6.100.

(4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain a record:

- (a) of an item furnished to a retailer;
- (b) on the premises of the industry member; and
- (c) for a three-year period.

(5) A sample of liquor may be provided to the department under the following conditions:

(a) With the department's permission, an industry member may submit a department sample to the department for product testing, analysis, and sampling.

(b) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.

(c) (i) A department sample may not exceed 1 liter.

(ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a larger size, not to exceed 5 liters:

- (A) wine;
- (B) heavy beer; or
- (C) a flavored malt beverage.

(d) A department sample submitted to the department:

(i) shall be shipped prepaid by the industry member by common carrier; and
(ii) may not be shipped by United States mail directly to the department's central administrative warehouse office.

(e) A department sample may not be shipped to any other location within the state.

(f) The industry member shall submit with a department sample submitted to the department a letter from the industry member that clearly:

- (i) identifies the product as a "department sample"; and
- (ii) states the FOB case price of the product.

(g) (i) The department may transfer a listed item from current stock:

- (A) for use as a comparison control sample; or
- (B) to verify product spoilage as considered appropriate.

(ii) The department shall charge back a sample transferred under this

Subsection (5)(g) to the respective industry member.

(h) The department shall:

- (i) account for, label, and record a department sample received or transferred;
- (ii) account for the department sample's disposition; and
- (iii) maintain a record of the sample and its disposition for a two-year period.

(i) The department shall affix to each container of a department sample a label clearly identifying the product as a "department sample."

(j) The department shall dispose of a department sample delivered to the

department or transferred from the department's current stock in one of the following ways as chosen by the department:

- (i) test and analyze the department sample, with the remaining contents destroyed under controlled and audited conditions established by the department;
- (ii) destroy the entire contents of the department sample under controlled and audited conditions established by the department; or
- (iii) add the department sample to the inventory of the department for sale to the public.

(k) A person other than an authorized department official may not be in possession of a department sample except as otherwise provided.

(l) The department shall handle a liquor item received by the department from a supplier that is not designated as a sample by the supplier, but that is an item not specifically listed on a department purchase order, in accordance with this Subsection (5).

(m) The department may not use its money to pay freight or charges on a sample or a liquor item:

- (i) shipped to the department by a supplier; and
- (ii) not listed on a department purchase order.

(6) A sample of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (6).

(a) A sample of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.

(b) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation, an industry member may furnish the next largest size.

(7) An educational seminar may involve an industry member under the conditions listed in this Subsection (7).

(a) An industry member may provide or participate in an educational seminar:

- (i) involving:
 - (A) the department;
 - (B) a retailer;
 - (C) a holder of a scientific or educational special use permit;
 - (D) another industry member; or
 - (E) an employee of a person listed in Subsections (7)(a)(i)(A) through (D); and
- (ii) regarding a topic such as:
 - (A) merchandising and product knowledge;
 - (B) use of equipment; and
 - (C) a tour of an alcoholic product manufacturing facility.

(b) An industry member may not pay the expenses of or compensate a person who is a department employee, a retailer, or a permittee for attending a seminar or tour described in Subsection (7)(a).

(8) (a) A liquor industry member may conduct a tasting of a liquor product of the industry member:

- (i) for the department, at the department's request; and
- (ii) for a licensed industry representative, but only at the department's central

administrative warehouse office.

(b) A liquor industry member may only use a department sample or industry representative sample when conducting a tasting of the industry member's liquor product.

(c) A beer industry member may conduct a tasting of a beer product for a beer retailer either at:

- (i) the industry member's premises; or
- (ii) a retail establishment.

(d) Except to the extent authorized by commission rule, an alcoholic product industry member may not conduct tasting or sampling activities with:

- (i) a retailer; or
- (ii) a member of the general public.

(9) A beer industry member may participate in a beer retailer association activity to the extent authorized by 27 C.F.R. Sec. 6.100.

(10) (a) An industry member may contribute to a charitable, civic, religious, fraternal, educational, or community activity, except the contribution may not be given to influence a retailer in the selection of a product that may be sold at the activity.

(b) An industry member or retailer violates this Subsection (10) if:

- (i) the industry member's contribution influences, directly or indirectly, the retailer in the selection of a product; and
- (ii) a competitor's product is excluded in whole or in part from sale at the activity.

(11) (a) An industry member may lease or furnish equipment listed in Subsection (11)(b) to a retailer if:

- (i) the equipment is leased or furnished for a special event;
- (ii) a reasonable rental or service fee is charged for the equipment; and
- (iii) the period for which the equipment is leased or furnished does not exceed 30 days.

(b) This Subsection (11) applies to the following equipment:

- (i) a picnic pump;
- (ii) a cold plate;
- (iii) a tub;
- (iv) a keg box;
- (v) a refrigerated trailer;
- (vi) a refrigerated van; or
- (vii) a refrigerated draft system.

(12) (a) A liquor industry member may assist the department in:

- (i) ordering, shipping, and delivering merchandise;
- (ii) new product notification;
- (iii) listing and delisting information;
- (iv) price quotations;
- (v) product sales analysis;
- (vi) shelf management; and
- (vii) an educational seminar.

(b) (i) A liquor industry member may, to acquire a new listing:

- (A) solicit an order from the department; and
- (B) submit to the department a sample of the liquor industry member's products

under Subsection (5) and price lists.

(ii) (A) An industry member is confined to the customer areas when the industry member visits a state store or package agency unless otherwise approved.

(B) An industry member is confined to the office area of a state warehouse when the industry member visits a state warehouse unless otherwise approved.

(13) A beer industry member may assist a beer retailer in:

- (a) ordering, shipping, and delivering beer merchandise;
- (b) new product notification;
- (c) listing and delisting information;
- (d) price quotations;
- (e) product sales analysis;
- (f) shelf management; and
- (g) an educational seminar.

(14) A beer industry member may, to acquire a new listing:

- (a) solicit an order from a beer retailer; and
- (b) submit to a beer retailer a sample of the beer industry member's beer products under Subsection (5) and price lists.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-4-706. Commercial bribery.

This section adopts and makes applicable to an industry member, including a beer industry member, doing business in this state, 27 U.S.C. Sec. 205(c) and 27 C.F.R. Sec. 10.1 through 10.54, which make it unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a wholesaler or retailer engaged in the sale of an alcoholic product to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold or offered for sale by other persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to any officer, employee, or representative of the wholesaler or retailer.

Enacted by Chapter 276, 2010 General Session

32B-4-707. Consignment sale.

(1) This section adopts and makes applicable to an industry member, including a beer industry member, doing business in this state, 27 U.S.C. Sec. 205(d) and 27 C.F.R. Sec. 11.1 through 11.46, which make it unlawful for an industry member, directly or indirectly, or through an affiliate to sell, offer for sale, or contract to sell to any wholesaler or retailer engaged in the sale of an alcoholic product, or for any wholesaler or retailer to purchase, offer to purchase, or contract to purchase any of those products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of the transaction involves, directly or indirectly, the acquisition by that person from the wholesaler or retailer or that person's agreement to acquire from the wholesaler or retailer other alcoholic beverages, if the sale, purchase, offer, or contract is made in the course of interstate or

foreign commerce, or if the person or wholesaler or retailer engages in such practice to an extent so as substantially to restrain or prevent transactions in interstate or foreign commerce in any of those products or if the direct effect of the sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any of those products to the wholesaler or retailer in interstate or foreign commerce.

(2) This section does not apply to a transaction involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

Enacted by Chapter 276, 2010 General Session

32B-4-708. Unlawful act involving consumers.

(1) (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to give away any of its product to a person except for testing, analysis, and sampling purposes by the department or local industry representative licensee to the extent authorized by this title.

(b) This Subsection (1) does not preclude an industry member from serving its product to others at a private event hosted by the industry member in the industry member's home or elsewhere so long as the product is not served:

- (i) as part of a promotion of the industry member's product; or
- (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or sampling purposes.

(2) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to engage in an advertisement or promotional scheme that requires the purchase or sale of an alcoholic product, or consumption of an alcoholic product, in order to participate in a promotion, program, or other activity.

(3) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to pay, give, or deliver to a person money or any other thing of value, including a rebate, refund, or prize, on the basis of the purchase, display, use, sale, or consumption of an alcoholic product.

(4) It is unlawful for an industry member or retailer to sponsor or underwrite an athletic, theatrical, scholastic, artistic, or scientific event that:

- (a) overtly promotes the consumption of a product;
- (b) offers a product to the general public without charge; or
- (c) takes place on the premises of a school, college, university, or other educational institution.

Enacted by Chapter 276, 2010 General Session

32B-5-101. Title.

This chapter is known as the "Retail License Act."

Enacted by Chapter 276, 2010 General Session

32B-5-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-5-201. Application requirements for retail license.

(1) (a) Before a person may store, sell, offer for sale, furnish, or permit consumption of an alcoholic product on licensed premises as a retail licensee, the person shall first obtain a retail license issued by the commission, notwithstanding whether the person holds a local license or a permit issued by a local authority.

(b) Violation of this Subsection (1) is a class B misdemeanor.

(2) To obtain a retail license under this title, a person shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable application fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;

(c) an initial license fee:

(i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and

(ii) that is refundable if a retail license is not issued;

(d) written consent of the local authority;

(e) a copy of the person's current business license;

(f) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;

(g) a bond as specified by Section 32B-5-204;

(h) a floor plan, and boundary map where applicable, of the premises of the retail license, including any:

(i) consumption area; and

(ii) area where the person proposes to store, sell, offer for sale, or furnish an alcoholic beverage;

(i) evidence that the retail licensee is carrying public liability insurance in an amount and form satisfactory to the department;

(j) evidence that the retail licensee is carrying dramshop insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(k) a signed consent form stating that the retail licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the retail licensee;

(l) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and

(m) any other information the commission or department may require.

(3) The commission may not issue a retail license to a person who:

(a) is disqualified under Section 32B-1-304; or

(b) is not lawfully present in the United States.

(4) Unless otherwise provided in the relevant part under Chapter 6, Specific Retail License Act, the commission may not issue a retail license to a person if the licensed premises does not meet the proximity requirements of Section 32B-1-202.

Enacted by Chapter 276, 2010 General Session

32B-5-202. Renewal requirements.

(1) A retail license expires each year on the day specified in the relevant part under Chapter 6, Specific Retail License Act, for that type of retail license.

(2) To renew a person's retail license, a retail licensee shall, by no later than the day specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed, submit:

(a) a completed renewal application to the department in a form prescribed by the department; and

(b) a renewal fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed.

(3) Failure to meet the renewal requirements results in an automatic forfeiture of the retail license effective on the date the existing retail license expires.

Enacted by Chapter 276, 2010 General Session

32B-5-203. Commission and department duties before issuing a retail license.

(1) (a) Before the commission may issue a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a retail license should be issued.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a retail license, the commission shall:

(a) determine that the person filed a complete application and is in compliance with:

(i) Section 32B-5-201; and

(ii) the specific licensing requirements specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the locality within which the proposed licensed premises is located, including:

(i) physical characteristics such as:

(A) condition of the licensed premises;

(B) square footage; and

(C) parking availability; and

(ii) operational factors such as:

(A) tourist traffic;

(B) demographics;

(C) population to be served;

(D) proximity to and density of other state stores, package agencies, and retail licensees; and

- (E) the extent of and proximity to any community location;
- (d) consider the person's ability to manage and operate a retail license of the type for which the person is applying, including:
 - (i) management experience;
 - (ii) past retail alcoholic product experience; and
 - (iii) the type of management scheme to be used by the retail licensee;
- (e) consider the nature or type of retail licensee operation of the proposed retail licensee, including:
 - (i) the type of menu items that will be offered and emphasized;
 - (ii) whether the retail licensee will emphasize service to an adult clientele or to minors;
 - (iii) the proposed hours of operation;
 - (iv) the seating capacity of the premises; and
 - (v) the estimated gross sales of food items; and
 - (f) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-5-204. Bond for retail license.

- (1) (a) A retail licensee shall post a cash bond or surety bond:
 - (i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and
 - (ii) payable to the department.
- (b) A retail licensee shall procure and maintain the bond required under this section for as long as the retail licensee continues to operate as a retail licensee.
- (2) A bond required under this section shall be:
 - (a) in a form approved by the attorney general; and
 - (b) conditioned upon the retail licensee's faithful compliance with this title and the rules of the commission.
- (3) (a) If a surety bond posted by a retail licensee under this section is canceled due to the retail licensee's negligence, the department may assess a \$300 reinstatement fee.
- (b) No part of a bond posted by a retail licensee under this section may be withdrawn:
 - (i) during the period the retail license is in effect; or
 - (ii) while a revocation proceeding is pending against the retail licensee.
- (4) (a) A bond posted under this section by a retail licensee may be forfeited if the retail license is revoked.
- (b) Notwithstanding Subsection (4)(a), the department may make a claim against a bond posted by a retail licensee for money owed the department under this title without the commission first revoking the retail license.

Enacted by Chapter 276, 2010 General Session

32B-5-205. Conditional retail license.

- (1) As used in this section:

- (a) "Conditional retail license" means a retail license that:
- (i) conditions the holder's ability to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises on the person submitting to the department a copy of the holder's current business license before obtaining a valid retail license; and
 - (ii) provides that the holder will be issued a valid retail license if the holder complies with the requirements of Subsection (3).
- (b) "Valid retail license" means a retail license issued pursuant to this part under which the holder is permitted to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises.
- (2) Subject to the requirements of this section, the commission may issue a conditional retail license to a person if the person:
- (a) meets the requirements to obtain the retail license for which the person is applying except the requirement to submit a copy of the person's current business license; and
 - (b) agrees not to sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its licensed premises before obtaining a valid retail license.
- (3) (a) A conditional retail license becomes a valid retail license on the day on which the department notifies the person who holds the conditional retail license that the department finds that the person has complied with Subsection (3)(b).
- (b) For a conditional retail license to become a valid retail license, a person who holds the conditional retail license shall:
- (i) submit to the department a copy of the person's current business license; and
 - (ii) provide to the department evidence satisfactory to the department that:
 - (A) there has been no change in the information submitted to the commission as part of the person's application for a retail license; and
 - (B) the person continues to qualify for the retail license.
- (4) (a) A conditional retail license expires nine months after the day on which the commission issues the conditional retail license, unless the conditional retail license becomes a valid retail license before that day.
- (b) Notwithstanding Subsection (4)(a), the commission may extend the time period of a conditional retail license an additional three months if the holder of the conditional license can show to the satisfaction of the commission that the holder of the conditional license:
- (i) has an active building permit related to the licensed premises; and
 - (ii) is engaged in a good faith effort to pursue completion within the three-month period.

Amended by Chapter 349, 2013 General Session

32B-5-206. Seasonal retail license.

- (1) If authorized in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license, the commission may in accordance with this section issue a seasonal retail license located in an area the commission considers proper.
- (2) (a) A seasonal retail license shall be for a period of six consecutive months.
- (b) A seasonal retail license issued for operation during a summer time period is

known as a "Seasonal A" retail license. The period of operation for a Seasonal A retail license:

(i) begins on May 1; and

(ii) ends on October 31.

(c) A seasonal retail license issued for operation during a winter time period is known as a "Seasonal B" retail license. The period of operation for a Seasonal B retail license:

(i) begins on November 1; and

(ii) ends on April 30.

(3) In determining the number of each type of retail license that the commission may issue under the relevant part under Chapter 6, Specific Retail License Act:

(a) a seasonal retail license is counted as one-half of one retail license of the specific type of retail license; and

(b) each Seasonal A retail license shall be paired with a Seasonal B retail license of the same type of retail license.

Enacted by Chapter 276, 2010 General Session

32B-5-301. General operational requirements.

(1) (a) A retail licensee and staff of a retail licensee shall comply with this title and the rules of the commission, including the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a retail licensee;

(ii) individual staff of a retail licensee; or

(iii) both a retail licensee and staff of the retail licensee.

(2) (a) If there is a conflict between this part and the relevant part under Chapter 6, Specific Retail License Act, for the specific type of retail license, the relevant part under Chapter 6 governs.

(b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.

(c) Notwithstanding that this part or the relevant part under Chapter 6, Specific Retail License Act, refers to "retail licensee," staff of the retail licensee is subject to the same requirement or prohibition.

(3) (a) A retail licensee shall display in a prominent place in the licensed premises the retail license that is issued by the department.

(b) A retail licensee shall display in a prominent place a sign in large letters that consists of text in the following order:

(i) a header that reads: "WARNING";

(ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";

(iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";

- (iv) a header that reads: "WARNING"; and
- (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.
- (d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.
- (4) A retail licensee may not on the licensed premises:
 - (a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;
 - (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling; or
 - (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.
- (5) A retail licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:
 - (a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or
 - (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.
- (6) Upon the presentation of credentials, at any time during which a retail licensee is open for the transaction of business, the retail licensee shall immediately:
 - (a) admit a commissioner, authorized department employee, or law enforcement officer to the retail licensee's premises; and
 - (b) permit, without hindrance or delay, the person described in Subsection (6)(a) to inspect completely:
 - (i) the entire premises of the retail licensee; and
 - (ii) the records of the retail licensee.
- (7) An individual may not consume an alcoholic product on the licensed premises of a retail licensee on any day during the period:
 - (a) beginning one hour after the time of day that the period during which a retail licensee may not sell, offer for sale, or furnish an alcoholic product on the licensed premises begins; and
 - (b) ending at the time specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license when the retail licensee may first sell, offer for sale, or furnish an alcoholic product on the licensed premises on that day.

Amended by Chapter 334, 2011 General Session

32B-5-302. Recordkeeping.

- (1) A retail licensee shall make and maintain a record showing in detail:
 - (a) quarterly expenditures made separately for:
 - (i) malt or brewed beverages;
 - (ii) liquor;
 - (iii) set-ups;
 - (iv) food; and
 - (v) any other item required by the department; and
 - (b) sales made separately for:
 - (i) malt or brewed beverages;
 - (ii) set-ups;
 - (iii) food; and
 - (iv) any other item required by the department.
- (2) A retail licensee shall make and maintain a record required by Subsection (1):
 - (a) in a form approved by the department; and
 - (b) current for each three-month period.
- (3) A retail licensee shall support an expenditure by:
 - (a) a delivery ticket;
 - (b) an invoice;
 - (c) a receipted bill;
 - (d) a canceled check;
 - (e) a petty cash voucher; or
 - (f) other sustaining datum or memorandum.
- (4) In addition to a record required under Subsection (1), a retail licensee shall make and maintain any other record the department may require.
- (5) (a) A record of a retail licensee is subject to inspection by an authorized representative of the commission and the department.
 - (b) A retail licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the retail licensee at times the department considers advisable.
- (6) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this section.

Enacted by Chapter 276, 2010 General Session

32B-5-303. Purchase and storage of an alcoholic product by a retail licensee.

- (1) (a) A retail licensee may not purchase liquor except from a state store or package agency.
- (b) A retail licensee may transport liquor purchased from a state store or package agency from the place of purchase to the licensed premises.
- (c) A retail licensee shall pay for liquor in accordance with rules established by the commission.
- (2) (a) (i) A retail licensee may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the retail licensee purchases from:
 - (A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

(b) (i) If a retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the retail licensee shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the retail licensee as provided in Section 32B-13-301.

(ii) Violation of Subsection (2)(b) is a class B misdemeanor.

(3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in a place other than as designated in the retail licensee's application, unless the retail licensee first applies for and receives approval from the department for a change of location within the licensed premises.

(4) A liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

Amended by Chapter 307, 2011 General Session

32B-5-304. Portions in which alcoholic product may be sold.

(1) A retail licensee may sell, offer for sale, or furnish a primary spirituous liquor only in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following requirements:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;

(ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

(iii) the retail licensee shall designate a location where flavorings are stored on the floor plan submitted to the department; and

(iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

(b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert; and

(c) a patron may have no more than 2.5 ounces of spirituous liquor at a time.

(2) (a) (i) A retail licensee may sell, offer for sale, or furnish wine by the glass or in an individual portion that does not exceed 5 ounces per glass or individual portion.

(ii) A retail licensee may sell, offer for sale, or furnish an individual portion of wine to a patron in more than one glass if the total amount of wine does not exceed 5 ounces.

(b) (i) A retail licensee may sell, offer for sale, or furnish wine in a container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

(ii) A retail licensee may sell, offer for sale, or furnish wine in a container not to

exceed 750 milliliters at a price fixed by the commission to a table of less than four persons.

(3) A retail licensee may sell, offer for sale, or furnish heavy beer in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(4) A retail licensee may sell, offer for sale, or furnish a flavored malt beverage in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(5) (a) Subject to Subsection (5)(b), a retail licensee may sell, offer for sale, or furnish beer for on-premise consumption:

(i) in an open original container; and

(ii) in a container on draft.

(b) A retail licensee may not sell, offer for sale, or furnish beer under Subsection (5)(a):

(i) in a size of container that exceeds two liters; or

(ii) to an individual patron in a size of container that exceeds one liter.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-5-305. Pricing of alcoholic product -- Other charge.

(1) (a) A retail licensee may sell, offer for sale, or furnish liquor only at a price fixed by the commission.

(b) A retail licensee may not sell an alcoholic product at a discount price on any date or at any time.

(2) (a) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at less than the cost of the alcoholic product to the retail licensee.

(b) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price that encourages over consumption or intoxication.

(c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product at a special or reduced price for only certain hours of the retail licensee's business day, such as a "happy hour."

(d) A retail licensee may not sell, offer for sale, or furnish more than one alcoholic product for the price of a single alcoholic product.

(e) A retail licensee may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price.

(f) A retail licensee may not engage in a promotion involving or offering a free alcoholic product to the general public.

(3) As authorized by commission rule, a retail licensee may charge a patron for providing:

(a) a service related to liquor purchased at the licensed premises; or

(b) wine service performed for wine carried in by a patron in accordance with Section 32B-5-307.

Amended by Chapter 334, 2011 General Session

32B-5-306. Purchasing or selling alcoholic product.

(1) A retail licensee may not sell, offer for sale, or furnish an alcoholic product to:

- (a) a minor;
- (b) a person actually, apparently, or obviously intoxicated;
- (c) a known interdicted person; or
- (d) a known habitual drunkard.

(2) (a) A patron may only purchase an alcoholic product in the licensed premises of a retail licensee from and be served by an individual who is:

- (i) staff of the retail licensee; and
- (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.

(b) An individual may sell, offer for sale, or furnish an alcoholic product to a patron only if the individual is:

- (i) staff of the retail licensee; and
- (ii) designated and trained by the retail licensee to sell and serve an alcoholic product.

(c) Notwithstanding Subsection (2)(a) or (b), a patron who purchases bottled wine from staff of the retail licensee or carries bottled wine onto the retail licensee's premises pursuant to Section 32B-5-307 may thereafter serve wine from the bottle to the patron or others at the patron's table.

(3) The following may not purchase an alcoholic product for a patron:

- (a) a retail licensee; or
- (b) staff of a retail licensee.

Enacted by Chapter 276, 2010 General Session

32B-5-307. Bringing onto or removing alcoholic product from premises.

(1) Except as provided in Subsection (3):

(a) A person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption.

(b) A retail licensee may not allow a person to:

- (i) bring onto licensed premises an alcoholic product for on-premise consumption; or
- (ii) consume an alcoholic product brought onto the licensed premises by a person other than the retail licensee.

(2) Except as provided in Subsection (3):

(a) A person may not carry from a licensed premises of a retail licensee an open container that:

- (i) is used primarily for drinking purposes; and
- (ii) contains an alcoholic product.

(b) A retail licensee may not permit a patron to carry from the licensed premises an open container described in Subsection (2)(a).

(3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for on-premise consumption if:

- (i) permitted by the retail licensee; and

(ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

(b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the patron shall deliver the bottled wine to a server or other representative of the retail licensee upon entering the licensed premises.

(c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a wine service for a bottled wine carried onto the licensed premises in accordance with this Subsection (3).

(d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased in the licensed premises, or brought onto the licensed premises in accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-5-308. Requirements on staff or others on premises -- Employing a minor.

(1) Staff of a retail licensee, while on duty, may not:

(a) consume an alcoholic product; or

(b) be intoxicated.

(2) (a) A retail licensee may not employ a minor to sell, offer for sale, furnish, or dispense an alcoholic product.

(b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

Amended by Chapter 307, 2011 General Session

32B-5-309 (Superseded 07/01/14). Ceasing operation -- Prohibiting transfer of license.

(1) (a) Except as provided in Subsection (1)(h), a retail licensee may not close or cease operation for a period longer than 240 hours, unless:

(i) the retail licensee notifies the department in writing at least seven days before the day on which the retail licensee closes or ceases operation; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (1)(a), in the case of emergency closure, a retail licensee shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation of a retail licensee for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon:

(A) written request of the retail licensee; and

(B) a showing of good cause.

(d) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(e) A notice required under this Subsection (1) shall include:

- (i) the dates of closure or cessation of operation;
 - (ii) the reason for the closure or cessation of operation; and
 - (iii) the date on which the retail licensee will reopen or resume operation.
- (f) Failure of a retail licensee to provide notice and to obtain department approval before closure or cessation of operation results in an automatic forfeiture of:
- (i) the retail license; and
 - (ii) the unused portion of the retail license fee for the remainder of the retail license year effective immediately.
- (g) Failure of a retail licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:
- (i) the retail license; and
 - (ii) the unused portion of the retail license fee for the remainder of the retail license year.
- (h) This Subsection (1) does not apply to:
- (i) an on-premise beer retailer who is not a tavern; or
 - (ii) an airport lounge licensee.
- (2) A retail licensee may not transfer a retail license from one location to another location, without prior written approval of the commission.
- (3) (a) A person, having been issued a retail license may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the retail license to another person whether for monetary gain or not.
- (b) A retail license has no monetary value for any type of disposition.

Enacted by Chapter 276, 2010 General Session
Enacted by Chapter 276, 2010 General Session

32B-5-310. Notifying department of change in ownership.

The commission may suspend or revoke a retail license if the retail licensee does not immediately notify the department of a change in:

- (1) ownership of the premises of the retail license;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors of the retail licensee; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers of the limited liability company; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-5-401. Title.

This part is known as the "Alcohol Training and Education Act."

Enacted by Chapter 276, 2010 General Session

32B-5-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-5-403. Alcohol training and education -- Revocation, suspension, or nonrenewal of retail license.

(1) The commission may suspend, revoke, or not renew a license of a retail licensee if any of the following individuals, as defined in Section 62A-15-401, fail to complete an alcohol training and education seminar:

- (a) an individual who manages operations at the licensed premises for consumption on the licensed premises;
- (b) an individual who supervises the furnishing of an alcoholic product to a patron for consumption on the licensed premises; or
- (c) an individual who serves an alcoholic product to a patron for consumption on the licensed premises.

(2) A city, town, or county in which a retail licensee conducts its business may suspend, revoke, or not renew the business license of the retail licensee if an individual described in Subsection (1) fails to complete an alcohol training and education seminar.

(3) A local authority that issues an off-premise beer retailer license to a business that is engaged in the retail sale of beer for consumption off the beer retailer's premises may immediately suspend the off-premise beer retailer license if any of the following individuals fails to complete an alcohol training and education seminar, an individual who:

- (a) directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or
- (b) sells beer to a patron for consumption off the premises of the off-premise beer retailer.

Enacted by Chapter 276, 2010 General Session

32B-5-404. Alcohol training and education for off-premise consumption.

(1) (a) A local authority that issues an off-premise beer retailer license to a business to sell beer at retail for off-premise consumption shall require the following to have a valid record that the individual completed an alcohol training and education seminar in the time periods required by Subsection (1)(b), an individual who:

- (i) directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or
- (ii) sells beer to a patron for consumption off the premises of the off-premise beer retailer.

(b) If an individual on the date the individual becomes staff to an off-premise beer retailer does not have a valid record that the individual has completed an alcohol training and education seminar for purposes of this part, the individual shall complete an alcohol training and education seminar within 30 days of the day on which the individual becomes staff of an off-premise beer retailer.

(c) Section 62A-15-401 governs the validity of a record that an individual has completed an alcohol training and education seminar required by this part.

(2) In accordance with Section 32B-5-403, a local authority may immediately suspend the license of an off-premise beer retailer that allows staff to directly supervise the sale of beer or to sell beer to a patron without having a valid record that the individual completed an alcohol training and education seminar in accordance with Subsection (1).

Enacted by Chapter 276, 2010 General Session

32B-6-101. Title.

This chapter is known as the "Specific Retail License Act."

Enacted by Chapter 276, 2010 General Session

32B-6-102. Definitions.

Reserved

Amended by Chapter 334, 2011 General Session

32B-6-201. Title.

This part is known as "Full-service Restaurant License."

Enacted by Chapter 276, 2010 General Session

32B-6-202. Definitions.

As used in this part:

(1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a full-service restaurant licensee that:

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in Subsection (1)(a)(i)(B); or

(II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued the full-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure described in Subsection (1)(a)(i);

- (iii) as of May 12, 2009, has no patron seating at the bar structure; or
- (iv) is not operational as of May 12, 2009, if:
 - (A) a person applying for a full-service restaurant license:
 - (I) has as of May 12, 2009, a building permit to construct the restaurant;
 - (II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and
 - (III) is issued a full-service restaurant license by no later than December 31, 2009; and
 - (B) once constructed, the licensed premises has a bar structure with no patron seating.
- (b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.
- (c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.
- (2) "Seating grandfathered bar structure" means:
 - (a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or
 - (b) a bar structure grandfathered under Section 32B-6-409.

Amended by Chapter 334, 2011 General Session

32B-6-203. Commission's power to issue full-service restaurant license.

- (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a full-service restaurant license from the commission in accordance with this part.
- (2) The commission may issue a full-service restaurant license to establish full-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated as a full-service restaurant.
- (3) Subject to Section 32B-1-201:
 - (a) The commission may not issue a total number of full-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by 4,534.
 - (b) The commission may issue a seasonal full-service restaurant license in accordance with Section 32B-5-206.
 - (c) (i) If the location, design, and construction of a hotel may require more than one full-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as many as three full-service restaurant locations within the hotel under one full-service restaurant license if:
 - (A) the hotel has a minimum of 150 guest rooms; and
 - (B) the locations under the full-service restaurant license are:
 - (I) within the same hotel; and
 - (II) on premises that are managed or operated, and owned or leased, by the

full-service restaurant licensee.

(ii) A facility other than a hotel shall have a separate full-service restaurant license for each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.

(4) (a) Except as provided in Subsection (4)(b), the commission may not issue a full-service restaurant license for premises that do not meet the proximity requirements of Section 32B-1-202.

(b) With respect to the premises of a full-service restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a full-service restaurant license to the new owner of the premises if:

(i) when a full-service restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);

(ii) the premises has had a full-service restaurant license at all times since the full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance; and

(iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in Subsection (4)(b)(i) was issued.

Amended by Chapter 1, 2012 Special Session 4

32B-6-204. Specific licensing requirements for full-service restaurant license.

(1) To obtain a full-service restaurant license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) A full-service restaurant license expires on October 31 of each year.

(b) To renew a person's full-service restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for a full-service restaurant license is \$330.

(b) The initial license fee for a full-service restaurant license is \$2,200.

(c) The renewal fee for a full-service restaurant license is in the following amount:

Gross Cost of Liquor in Previous License Year for the Licensee	Renewal Fee
under \$5,000	\$935
equals or exceeds \$5,000 but less than \$10,000	\$1,155
equals or exceeds \$10,000 but less than \$25,000	\$1,650
equals or exceeds \$25,000	\$1,925

(4) The bond amount required for a full-service restaurant license is the penal sum of \$10,000.

Amended by Chapter 1, 2012 Special Session 4

32B-6-205. Specific operational requirements for a full-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a full-service restaurant licensee;
- (ii) individual staff of a full-service restaurant licensee; or
- (iii) both a full-service restaurant licensee and staff of the full-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee shall display in a prominent place in the restaurant a list of the types and brand names of liquor being furnished through the full-service restaurant licensee's calibrated metered dispensing system.

(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a full-service restaurant licensee.

(6) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish liquor at the licensed premises on any day during the period that:

- (i) begins at midnight; and
- (ii) ends at 11:29 a.m.

(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer, except that a full-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.

(7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include:

- (a) mix for an alcoholic product; or
- (b) a service charge.

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except after the full-service restaurant licensee confirms that the patron has the intent to order food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not

have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a full-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a full-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the full-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a grandfathered bar structure;

(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or

(iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(I) not readily visible to a patron; and

(II) not accessible by a patron; and

(B) apart from an area used:

- (I) for dining;
- (II) for staging; or
- (III) as a lobby or waiting area;
- (b) the full-service restaurant licensee uses an alcoholic product that is:
 - (i) stored in an area described in Subsection (12)(a); or
 - (ii) in an area not described in Subsection (12)(a) on the licensed premises and:
 - (A) immediately before the alcoholic product is dispensed it is in an unopened container;
 - (B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and
 - (C) once opened, the container is stored in an area described in Subsection (12)(a); and
 - (c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).
- (13) A full-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of liquor including:
 - (a) a set-up charge;
 - (b) a service charge; or
 - (c) a chilling fee.

Amended by Chapter 353, 2013 General Session

32B-6-205.1. Credit for grandfathered bar structures of full-service restaurant licensee.

- (1) A full-service restaurant licensee that has a grandfathered bar structure may receive a credit for purchases from a state store or package agency if:
 - (a) the full-service restaurant licensee completes a remodel of the grandfathered bar structure by no later than December 31, 2011;
 - (b) the remodeling described in Subsection (1)(a) results in the full-service restaurant licensee engaging in an activity described in Subsection 32B-6-205(12) only in an area described in Subsection 32B-6-205(12)(a)(iii);
 - (c) the full-service restaurant licensee requests the credit by no later than April 1, 2012;
 - (d) the department determines that the full-service restaurant licensee has completed a remodel described in Subsections (1)(a) and (b); and
 - (e) the department authorizes the credit, including the amount of the credit under Subsection (2), on the basis that:
 - (i) the full-service restaurant licensee complied with this section; and
 - (ii) the aggregate of credits authorized under this section and Section 32B-6-305.1 before the current authorization does not exceed the amount described in Subsection (5)(a).
- (2) The amount of the credit described in this section is the lesser of:
 - (a) the actual costs of the remodel as evidenced by receipts, copies of which are submitted to the department as part of the request for the credit; or
 - (b) \$30,000.

- (3) For a full-service restaurant licensee, a credit under this section:
 - (a) begins on the day on which the department authorizes the credit under Subsection (1); and
 - (b) ends the day on which the full-service restaurant licensee uses all of the credit.
- (4) The department shall by contract provide for how a package agency accounts for a credit purchase made at the package agency by a full-service restaurant licensee under this section.
- (5) (a) Notwithstanding the other provisions of this section, the department may not authorize a credit if the aggregate of credits authorized under this section and Section 32B-6-305.1 before the department authorizes the credit exceeds:
 - (i) \$1,000,000, for the aggregate of credits under this section and Section 32B-6-305.1, if the credit could be used on or before June 30, 2010; and
 - (ii) subject to Subsection (5)(a)(i), \$1,090,000 for the aggregate of all credits that can be authorized under this section and Section 32B-6-305.1.
- (b) The department shall authorize credits in the order that the department receives a request described in Subsection (1)(c) from a full-service restaurant licensee requesting a credit under this section.

Enacted by Chapter 276, 2010 General Session

32B-6-206. Master full-service restaurant license.

- (1) (a) The commission may issue a master full-service restaurant license that authorizes a person to store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on premises at multiple locations as full-service restaurants if the person applying for the master full-service restaurant license:
 - (i) owns each of the full-service restaurants;
 - (ii) except for the fee requirements, establishes to the satisfaction of the commission that each location of a full-service restaurant under the master full-service restaurant license separately meets the requirements of this part; and
 - (iii) the master full-service restaurant license includes at least five full-service restaurant locations.
- (b) The person seeking a master full-service restaurant license shall designate which full-service restaurant locations the person seeks to have under the master full-service restaurant license.
- (c) A full-service restaurant location under a master full-service restaurant license is considered separately licensed for purposes of this title, except as provided in this section.
- (2) A master full-service restaurant license and each location designated under Subsection (1) are considered a single full-service restaurant license for purposes of Subsection 32B-6-203(3)(a).
- (3) (a) A master full-service restaurant license expires on October 31 of each year.
- (b) To renew a person's full-service restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(4) (a) The nonrefundable application fee for a master full-service restaurant license is \$330.

(b) The initial license fee for a master full-service restaurant license is \$10,000 plus a separate initial license fee for each newly licensed full-service restaurant license under the master full-service restaurant license determined in accordance with Subsection 32B-6-204(3)(b).

(c) The renewal fee for a master full-service restaurant license is \$1,000 plus a separate renewal fee for each full-service license under the master full-service restaurant license determined in accordance with Subsection 32B-6-204(3)(c).

(5) A new location may be added to a master full-service restaurant license after the master full-service restaurant license is issued if:

(a) the master full-service restaurant licensee pays a nonrefundable application fee of \$330; and

(b) including payment of the initial license fee, the location separately meets the requirements of this part.

(6) (a) A master full-service restaurant licensee shall notify the department of a change in the persons managing a location covered by a master full-service restaurant license:

(i) immediately, if the management personnel is not management personnel at a location covered by the master full-service restaurant licensee at the time of the change; or

(ii) within 30 days of the change, if the master full-service restaurant licensee is transferring management personnel from one location to another location covered by the master full-service restaurant licensee.

(b) A location covered by a master full-service restaurant license shall keep its own records on its premises so that the department may audit the records.

(c) A master full-service restaurant licensee may not transfer alcoholic products between different locations covered by the master full-service restaurant license.

(7) (a) If there is a violation of this title at a location covered by a master full-service restaurant license, the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) the single location under a master full-service restaurant license;

(ii) individual staff of the location under the master full-service restaurant license;

or

(iii) a combination of persons or locations described in Subsections (7)(a)(i) and (ii).

(b) In addition to disciplinary action under Subsection (7)(a), disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, may be taken against a master full-service restaurant licensee or individual staff of the master full-service restaurant licensee if during a period beginning on November 1 and ending October 31:

(i) at least 25% of the locations covered by the master full-service restaurant license have been found by the commission to have committed a serious or grave violation of this title, as defined by rule made by the commission; or

(ii) at least 50% of the locations covered by the master full-service restaurant license have been found by the commission to have violated this title.

(8) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish how a person may apply for a master full-service restaurant license under this section.

Enacted by Chapter 349, 2013 General Session

32B-6-301. Title.

This part is known as "Limited-service Restaurant License."

Enacted by Chapter 276, 2010 General Session

32B-6-302. Definitions.

As used in this part:

(1) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a limited-service restaurant licensee that:

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in Subsection (1)(a)(i)(B); or

(II) if the partition as described in Subsection (1)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a limited-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued the limited-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure described in Subsection (1)(a)(i);

(iii) as of May 12, 2009, has no patron seating at the bar structure; or

(iv) is not operational as of May 12, 2009, if:

(A) a person applying for a limited-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued a limited-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure with no patron seating.

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the

grandfathered bar structure, as defined by rule made by the commission.

(c) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

(2) "Seating grandfathered bar structure" means:

(a) a grandfathered bar structure described in Subsection (1)(a)(i) or (ii); or

(b) a bar structure grandfathered under Section 32B-6-409.

(3) "Wine" includes an alcoholic beverage defined as wine under 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 4.10, including the following alcoholic beverages made in the manner of wine containing not less than 7% and not more than 24% of alcohol by volume:

(a) sparkling and carbonated wine;

(b) wine made from condensed grape must;

(c) wine made from other agricultural products than the juice of sound, ripe grapes;

(d) imitation wine;

(e) compounds sold as wine;

(f) vermouth;

(g) cider;

(h) perry; and

(i) sake.

Amended by Chapter 334, 2011 General Session

32B-6-303. Commission's power to issue limited-service restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first obtain a limited-service restaurant license from the commission in accordance with this part.

(2) (a) The commission may issue a limited-service restaurant license to establish limited-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of wine, heavy beer, or beer on premises operated as a limited-service restaurant.

(b) A person may not sell, offer for sale, furnish, or allow the consumption of the following on the licensed premises of a limited-service restaurant licensee:

(i) spirituous liquor; or

(ii) a flavored malt beverage.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of limited-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by 7,493.

(b) The commission may issue a seasonal limited-service restaurant license in accordance with Section 32B-5-206.

(c) (i) If the location, design, and construction of a hotel may require more than

one limited-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale of wine, heavy beer, and beer at as many as three limited-service restaurant locations within the hotel under one limited-service restaurant license if:

- (A) the hotel has a minimum of 150 guest rooms; and
- (B) the locations under the limited-service restaurant license are:
 - (I) within the same hotel; and
 - (II) on premises that are managed or operated, and owned or leased, by the limited-service restaurant licensee.

- (ii) A facility other than a hotel shall have a separate limited-service restaurant license for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for sale, or furnished.

(4) (a) Except as provided in Subsection (4)(b), the commission may not issue a limited-service restaurant license for premises that do not meet the proximity requirements of Section 32B-1-202.

(b) With respect to the premises of a limited-service restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a limited-service restaurant license to the new owner of the premises if:

- (i) when a limited-service restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);

- (ii) the premises has had a limited-service restaurant license at all times since the limited-service restaurant license described in Subsection (4)(b)(i) was issued without a variance; and

- (iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the limited-service restaurant license described in Subsection (4)(b)(i) was issued.

Amended by Chapter 1, 2012 Special Session 4

32B-6-304. Specific licensing requirements for limited-service restaurant license.

(1) To obtain a limited-service restaurant license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) A limited-service restaurant license expires on October 31 of each year.

(b) To renew a person's limited-service restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for a limited-service restaurant license is \$330.

(b) The initial license fee for a limited-service restaurant license is \$825.

(c) The renewal fee for a limited-service restaurant license is \$605.

(4) The bond amount required for a limited-service restaurant license is the penal sum of \$5,000.

Amended by Chapter 1, 2012 Special Session 4

32B-6-305. Specific operational requirements for a limited-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a limited-service restaurant licensee;
- (ii) individual staff of a limited-service restaurant licensee; or
- (iii) both a limited-service restaurant licensee and staff of the limited-service restaurant licensee.

(2) (a) A limited-service restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of:

- (i) spirituous liquor; or
- (ii) a flavored malt beverage.

(b) A product listed in Subsection (2)(a) may not be on the premises of a limited-service restaurant licensee except for use:

- (i) as a flavoring on a dessert; and
- (ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a limited-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a limited-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a limited-service restaurant licensee.

(6) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish wine or heavy beer at the licensed premises on any day during the period that:

- (i) begins at midnight; and
- (ii) ends at 11:29 a.m.

(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer, except that a limited-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.

(7) A limited-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except after the limited-service restaurant licensee confirms that the patron has the intent to order food prepared, sold, and furnished at the licensed premises.

(b) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not

have more than two alcoholic products of any kind at a time before the patron.

(b) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a limited-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a limited-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the limited-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a limited-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a grandfathered bar structure;

(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or

(iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(I) not readily visible to a patron; and

(II) not accessible by a patron; and

(B) apart from an area used:

(I) for dining;

(II) for staging; or

- (III) as a lobby or waiting area;
- (b) the limited-service restaurant licensee uses an alcoholic product that is:
 - (i) stored in an area described in Subsection (12)(a); or
 - (ii) in an area not described in Subsection (12)(a) on the licensed premises and:
 - (A) immediately before the alcoholic product is dispensed it is in an unopened container;
 - (B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and
 - (C) once opened, the container is stored in an area described in Subsection (12)(a); and
 - (c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).
- (13) A limited-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of wine or heavy beer including:
 - (a) a set-up charge;
 - (b) a service charge; or
 - (c) a chilling fee.

Amended by Chapter 353, 2013 General Session

32B-6-305.1. Credit for grandfathered bar structures for limited-service restaurant licensee.

- (1) A limited-service restaurant licensee that has a grandfathered bar structure may receive a credit for purchases from a state store or package agency if:
 - (a) the limited-service restaurant licensee completes a remodel of the grandfathered bar structure by no later than December 31, 2011;
 - (b) the remodeling described in Subsection (1)(a) results in the limited-service restaurant licensee engaging in an activity described in Subsection 32B-6-305(12) only in an area described in Subsection 32B-6-305(12)(a)(iii);
 - (c) the limited-service restaurant licensee requests the credit by no later than April 1, 2012;
 - (d) the department determines that the limited-service restaurant licensee has completed a remodel described in Subsections (1)(a) and (b); and
 - (e) the department authorizes the credit, including the amount of the credit under Subsection (2), on the basis that:
 - (i) the limited-service restaurant licensee complied with this section; and
 - (ii) the aggregate of credits authorized under this section and Section 32B-6-205.1 before the current authorization does not exceed the amount described in Subsection (5)(a).
- (2) The amount of the credit described in this section is the lesser of:
 - (a) the actual costs of the remodel as evidenced by receipts, copies of which are submitted to the department as part of the request for the credit; or
 - (b) \$30,000.
- (3) For a limited-service restaurant licensee, a credit under this section:
 - (a) begins on the day on which the department authorizes the credit under

Subsection (1); and

(b) ends the day on which the limited-service restaurant licensee uses all of the credit.

(4) The department shall by contract provide for how a package agency accounts for a credit purchase made at the package agency by a limited-service restaurant licensee under this section.

(5) (a) Notwithstanding the other provisions of this section, the department may not authorize a credit if the aggregate of credits authorized under this section and Section 32B-6-205.1 before the department authorizes the credit exceeds:

(i) \$1,000,000, for the aggregate of credits under this section and Section 32B-6-205.1, if the credit could be used on or before June 30, 2010; and

(ii) subject to Subsection (5)(a)(i), \$1,090,000 for the aggregate of all credits that can be authorized under this section and Section 32B-6-205.1.

(b) The department shall authorize credits in the order that the department receives a request described in Subsection (1)(c) from a limited-service restaurant licensee requesting a credit under this section.

Enacted by Chapter 276, 2010 General Session

32B-6-306. Master limited-service restaurant license.

(1) (a) The commission may issue a master limited-service restaurant license that authorizes a person to store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on premises at multiple locations as limited-service restaurants if the person applying for the master limited-service restaurant license:

(i) owns each of the limited-service restaurants;

(ii) except for the fee requirements, establishes to the satisfaction of the commission that each location of a limited-service restaurant under the master limited-service restaurant license separately meets the requirements of this part; and

(iii) the master limited-service restaurant includes at least five limited-service restaurant locations.

(b) The person seeking a master limited-service restaurant license shall designate which limited-service restaurant locations the person seeks to have under the master limited-service restaurant license.

(c) A limited-service restaurant location under a master limited-service restaurant license is considered separately licensed for purposes of this title, except as provided in this section.

(2) A master limited-service restaurant license and each location under Subsection (1) are considered a single limited-service restaurant license for purposes of Subsection 32B-6-303(3)(a).

(3) (a) A master limited-service restaurant license expires on October 31 of each year.

(b) To renew a person's master limited-service restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(4) (a) The nonrefundable application fee for a master limited-service restaurant license is \$330.

(b) The initial license fee for a master limited-service restaurant license is \$5,000 plus a separate initial license fee for each newly licensed limited-service restaurant license under the master limited-service restaurant license determined in accordance with Subsection 32B-6-304(3)(b).

(c) The renewal fee for a master limited-service restaurant license is \$500 plus a separate renewal fee for each limited-service license under the master limited-service restaurant license determined in accordance with Subsection 32B-6-304(3)(c).

(5) A new location may be added to a master limited-service restaurant license after the master limited-service restaurant license is issued if:

(a) the master limited-service restaurant licensee pays a nonrefundable application fee of \$330; and

(b) including payment of the initial license fee, the location separately meets the requirements of this part.

(6) (a) A master limited-service restaurant licensee shall notify the department of a change in the persons managing a location covered by a master limited-service restaurant license:

(i) immediately, if the management personnel is not management personnel at a location covered by the master limited-service restaurant licensee at the time of the change; or

(ii) within 30 days of the change, if the master limited-service restaurant licensee is transferring management personnel from one location to another location covered by the master limited-service restaurant licensee.

(b) A location covered by a master limited-service restaurant license shall keep its own records on its premises so that the department may audit the records.

(c) A master limited-service restaurant licensee may not transfer alcoholic products between different locations covered by the master limited-service restaurant license.

(7) (a) If there is a violation of this title at a location covered by a master limited-service restaurant license, the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) the single location under a master limited-service restaurant license;

(ii) individual staff of the location under the master limited-service restaurant license; or

(iii) a combination of persons or locations described in Subsections (7)(a)(i) and (ii).

(b) In addition to disciplinary action under Subsection (7)(a), disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, may be taken against a master limited-service restaurant licensee or individual staff of the master limited-service restaurant licensee if during a period beginning on November 1 and ending October 31:

(i) at least 25% of the locations covered by the master limited-service restaurant license have been found by the commission to have committed a serious or grave violation of this title, as defined by rule made by the commission; or

(ii) at least 50% of the locations covered by the master limited-service restaurant license have been found by the commission to have violated this title.

(8) The commission may make rules, in accordance with Title 63G, Chapter 3,

Utah Administrative Rulemaking Act, to establish how a person may apply for a master limited-service restaurant license under this section.

Enacted by Chapter 349, 2013 General Session

32B-6-401. Title.

This part is known as "Club License."

Enacted by Chapter 276, 2010 General Session

32B-6-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-6-403. Commission's power to issue club license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a club licensee, the person shall first obtain a club license from the commission in accordance with this part.

(2) The commission may issue a club license to establish club licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated by a club licensee.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of club licenses that at any time exceeds the number determined by dividing the population of the state by 7,850.

(b) The commission may issue a seasonal club license in accordance with Section 32B-5-206 to:

(i) a dining club licensee; or

(ii) a social club licensee.

(c) (i) If the location, design, and construction of a hotel may require more than one dining club license or social club license location within the hotel to serve the public convenience, the commission may authorize as many as three club license locations within the hotel under one club license if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) all locations under the club license are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the club licensee.

(ii) A facility other than a hotel shall have a separate club license for each club license location where an alcoholic product is sold, offered for sale, or furnished.

(d) When a business establishment undergoes a change of ownership, the commission may issue a club license to the new owner of the business establishment notwithstanding that there is no club license available under Subsection (3)(a) if:

(i) the primary business activity at the business establishment before and after the change of ownership is not the sale, offer for sale, or furnishing of an alcoholic

product;

(ii) before the change of ownership there are two or more licensed premises on the business establishment that operate under a retail license, with at least one of the retail licenses being a club license;

(iii) subject to Subsection (3)(e), the licensed premises of the club license issued under this Subsection (3)(d) is at the same location where the club license licensed premises was located before the change of ownership; and

(iv) the person who is the new owner of the business establishment qualifies for the club license, except for there being no club license available under Subsection (3)(a).

(e) If a club licensee of a club license issued under Subsection (3)(d) requests a change of location, the club licensee may retain the club license after the change of location only if on the day on which the club licensee seeks a change of location a club license is available under Subsection (3)(a).

Amended by Chapter 2, 2011 Special Session 2

32B-6-404. Types of club license.

(1) To obtain an equity club license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

(ii) have members;

(iii) limit access to its licensed premises to a member or a guest of the member;

and

(iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

(b) own, maintain, or operate a substantial recreational facility in conjunction with a club house such as:

(i) a golf course; or

(ii) a tennis facility;

(c) have at least 50% of the total membership having:

(i) full voting rights; and

(ii) an equal share of the equity of the club; and

(d) if there is more than one class of membership, have at least one class of membership that entitles each member in that class to:

(i) full voting rights; and

(ii) an equal share of the equity of the club.

(2) To obtain a fraternal club license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

(ii) have members;

(iii) limit access to its licensed premises to a member or a guest of the member;
and

(iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

(b) have no capital stock;

(c) exist solely for:

(i) the benefit of its members and their beneficiaries; and

(ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purpose for the benefit of its members or the public, carried on through voluntary activity of its members in their local lodges;

(d) have a representative form of government;

(e) have a lodge system in which:

(i) there is a supreme governing body;

(ii) subordinate to the supreme governing body are local lodges, however designated, into which individuals are admitted as members in accordance with the laws of the fraternal;

(iii) the local lodges are required by the laws of the fraternal to hold regular meetings at least monthly; and

(iv) the local lodges regularly engage in one or more programs involving member participation to implement the purposes of Subsection (2)(c); and

(f) own or lease a building or space in a building used for lodge activities.

(3) To obtain a dining club license, in addition to meeting the other requirements of this part, a person shall:

(a) maintain at least the following percentages of its total club business from the sale of food, not including mix for alcoholic products, or service charges:

(i) for a dining club license that is issued an original license on or after July 1, 2011, 60%; and

(ii) for a dining club license that is issued on or before June 30, 2011:

(A) 50% on or before June 30, 2012; and

(B) 60% on and after July 1, 2012; and

(b) obtain a determination by the commission that the person will operate as a dining club licensee, as part of which the commission may consider:

(i) the square footage and seating capacity of the premises;

(ii) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;

(iii) whether full meals including appetizers, main courses, and desserts are served;

(iv) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person who is located on the premise of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(v) whether the entertainment provided at the club is suitable for minors; and

(vi) the club management's ability to manage and operate a dining club license including:

(A) management experience;

(B) past dining club licensee or restaurant management experience; and

- (C) the type of management scheme used by the dining club license.
- (4) To obtain a social club license, a person is required to meet the requirements of this part except those listed in Subsection (1), (2), or (3).
- (5) (a) At the time that the commission issues a club license, the commission shall designate the type of club license for which the person qualifies.
- (b) If requested by a club licensee, the commission may approve a change in the type of club license in accordance with rules made by the commission.
- (6) To the extent not prohibited by law, this part does not prevent a dining club licensee or social club licensee from restricting access to the club's licensed premises on the basis of an individual:
 - (a) paying a fee; or
 - (b) agreeing to being on a list of individuals who have access to the club's licensed premises.

Amended by Chapter 2, 2011 Special Session 2

32B-6-405. Specific licensing requirements for club license.

- (1) To obtain a club license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:
 - (a) (i) a statement as to whether the person is seeking to qualify as:
 - (A) an equity club licensee;
 - (B) a fraternal club licensee;
 - (C) a dining club licensee; or
 - (D) a social club licensee; and
 - (ii) evidence that the person meets the requirements for the type of club license for which the person is applying;
 - (b) evidence that the person operates club premises where a variety of food is prepared and served in connection with dining accommodations; and
 - (c) if the person is applying for an equity club license or fraternal club license, a copy of the club's bylaws or house rules, and an amendment to those records.
- (2) The commission may refuse to issue a club license to a person for an equity club license or fraternal club license if the commission determines that a provision of the person's bylaws or house rules, or amendments to those records is not:
 - (a) reasonable; and
 - (b) consistent with:
 - (i) the declared nature and purpose of the club licensee; and
 - (ii) the purposes of this part.
- (3) (a) A club license expires on June 30 of each year.
- (b) To renew a club license, a person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than May 31.
- (4) (a) The nonrefundable application fee for a club license is \$300.
- (b) The initial license fee for a club license is \$2,750.
- (c) The renewal fee for a club license is \$2,000.
- (5) The bond amount required for a club license is the penal sum of \$10,000.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-6-406. Specific operational requirements for a club license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a club licensee and staff of the club licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a club licensee;
- (ii) individual staff of a club licensee; or
- (iii) both a club licensee and staff of the club licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a club licensee shall display in a prominent place in the club licensed premises a list of the types and brand names of liquor being furnished through the club licensee's calibrated metered dispensing system.

(3) (a) In addition to complying with Section 32B-5-302, a club licensee shall maintain for a minimum of three years:

- (i) a record required by Section 32B-5-302; and
- (ii) a record maintained or used by the club licensee, as the department requires.

(b) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (3).

(c) The department shall audit the records of a club licensee at least once annually.

(4) (a) A club licensee may not sell, offer for sale, or furnish liquor on the licensed premises on any day during a period that:

- (i) begins at 1 a.m.; and
- (ii) ends at 9:59 a.m.

(b) A club licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer license.

(c) (i) Notwithstanding Subsections (4)(a) and (b), a club licensee shall keep its licensed premises open for one hour after the club licensee ceases the sale and furnishing of an alcoholic product during which time a patron of the club licensee may finish consuming:

- (A) a single drink containing spirituous liquor;
- (B) a single serving of wine not exceeding five ounces;
- (C) a single serving of heavy beer;
- (D) a single serving of beer not exceeding 26 ounces; or
- (E) a single serving of a flavored malt beverage.

(ii) A club licensee is not required to remain open:

- (A) after all patrons have vacated the premises; or
- (B) during an emergency.

(5) (a) A minor may not be admitted into, use, or be in:

- (i) a lounge or bar area of the premises of:
 - (A) an equity club licensee;

- (B) a fraternal club licensee; or
- (C) a dining club licensee; or
- (ii) the premises of:
 - (A) a dining club licensee unless accompanied by an individual who is 21 years of age or older; or
 - (B) a social club licensee, except to the extent provided for under Section 32B-6-406.1.
- (b) Notwithstanding Section 32B-5-308, a club licensee may not employ a minor to:
 - (i) work in a lounge or bar area of an equity club licensee, fraternal club licensee, or dining club licensee; or
 - (ii) handle an alcoholic product.
- (c) Notwithstanding Section 32B-5-308, a minor may not be employed on the licensed premises of a social club licensee.
- (d) Nothing in this part or Section 32B-5-308 precludes a local authority from being more restrictive of a minor's admittance to, use of, or presence on the licensed premises of a club licensee.
- (6) A club licensee shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the licensed premises.
- (7) (a) Subject to the other provisions of this Subsection (7), a patron may not have more than two alcoholic products of any kind at a time before the patron.
- (b) A patron may not have two spirituous liquor drinks before the club licensee patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.
- (c) An individual portion of wine is considered to be one alcoholic product under Subsection (7)(a).
- (8) A club licensee shall have available on the premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold, offered for sale, or furnished by the club licensee including:
 - (a) a set-up charge;
 - (b) a service charge; or
 - (c) a chilling fee.
- (9) Subject to Section 32B-5-309, a club licensee may not temporarily rent or otherwise temporarily lease its premises to a person unless:
 - (a) the person to whom the club licensee rents or leases the premises agrees in writing to comply with this title as if the person is the club licensee, except for a requirement related to making or maintaining a record; and
 - (b) the club licensee takes reasonable steps to ensure that the person complies with this section as provided in Subsection (9)(a).
- (10) If a club licensee is an equity club licensee or fraternal club licensee, the club licensee shall comply with Section 32B-6-407.
- (11) If a club licensee is a dining club licensee or social club licensee, the club licensee shall comply with Section 32B-1-407.
- (12) (a) A club licensee shall own or lease premises suitable for the club licensee's activities.

(b) A club licensee may not maintain licensed premises in a manner that barricades or conceals the club licensee's operation.

Amended by Chapter 334, 2011 General Session

32B-6-406.1. Specific operational restrictions related to dance or concert hall.

(1) A minor who is at least 18 years of age may be admitted into, use, or be on the premises of a dance or concert hall if:

(a) the dance or concert hall is located:

(i) on the licensed premises of a social club licensee; or

(ii) on the property that immediately adjoins the licensed premises of and is operated by a social club licensee; and

(b) the social club licensee holds a permit to operate a dance or concert hall that was issued on or before May 11, 2009:

(i) on the basis of the operational requirements described in Subsection (2); and

(ii) when the social club licensee was licensed as a class D private club.

(2) A social club licensee that holds a dance or concert hall permit shall operate in such a way that:

(a) the social club licensee's lounge, bar, or other area for alcoholic product consumption is:

(i) not accessible to a minor;

(ii) clearly defined; and

(iii) separated from the dance or concert hall area by one or more walls, multiple floor levels, or other substantial physical barriers;

(b) a bar or dispensing area is not visible to a minor;

(c) consumption of an alcoholic product may not occur in:

(i) the dance or concert hall area; or

(ii) an area of the social club license premises accessible to a minor;

(d) the social club licensee maintains sufficient security personnel to prevent the passing of beverages from the social club licensee's lounge, bar, or other area for alcoholic product consumption to:

(i) the dance or concert hall area; or

(ii) an area of the social club licensee premises accessible to a minor;

(e) there are one or more separate entrances, exits, and restroom facilities from the social club licensee's lounge, bar, or other area for alcoholic product consumption than for:

(i) the dance or concert hall area; or

(ii) an area accessible to a minor; and

(f) the social club licensee complies with any other requirements imposed by the commission by rule.

(3) (a) A minor under 18 years of age who is accompanied at all times by a parent or legal guardian may be admitted into, use, or be on the premises of a concert hall described in Subsection (1) if:

(i) the requirements of Subsection (2) are met; and

(ii) signage, product, and dispensing equipment containing recognition of an

alcoholic product is not visible to the minor.

(b) A minor under 18 years of age but who is 14 years of age or older who is not accompanied by a parent or legal guardian may be admitted into, use, or be on the premises of a concert hall described in Subsection (1) if:

- (i) the requirements of Subsections (2) and (3)(a) are met; and
- (ii) there is no alcoholic product, sales, furnishing, or consumption on the premises of the social club licensee.

(4) The commission may suspend or revoke a dance or concert permit issued to a social club licensee and suspend or revoke the license of the social club licensee if:

- (a) the social club licensee fails to comply with the requirements in this section;
- (b) the social club licensee sells, offers for sale, or furnishes an alcoholic product to a minor;

- (c) the social club licensee or a supervisory or managerial level staff of the social club licensee is convicted under Title 58, Chapter 37, Utah Controlled Substances Act, on the basis of an activity that occurs on:

- (i) the licensed premises; or
 - (ii) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the social club licensee;

- (d) there are three or more convictions of patrons of the social club licensee under Title 58, Chapter 37, Utah Controlled Substances Act, on the basis of activities that occur on:

- (i) the licensed premises; or
 - (ii) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the social club licensee;

- (iii) there is more than one conviction:

- (A) of:

- (I) the social club licensee;

- (II) staff of the social club licensee;

- (III) an entertainer contracted by the social club licensee; or

- (IV) a patron of the social club licensee; and

- (B) made on the basis of a lewd act or lewd entertainment prohibited by this title that occurs on:

- (I) the licensed premises; or
 - (II) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the social club licensee; or

- (e) the commission finds acts or conduct contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title that occurs on:

- (i) the licensed premises; or
 - (ii) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the social club licensee.

(5) Nothing in this section prohibits a social club licensee from selling, offering for sale, or furnishing an alcoholic product in a dance or concert area located on the social club licensed premises on days and times when the social club licensee does not allow a minor into those areas.

32B-6-407. Specific operational requirements for equity club license or fraternal club license.

- (1) For purposes of this section only:
 - (a) "Club licensee" means an equity club licensee or fraternal club licensee.
 - (b) "Club licensee" does not include a dining club licensee or social club licensee.
- (2) (a) A club licensee shall have a governing body that:
 - (i) consists of three or more members of the club; and
 - (ii) holds regular meetings to:
 - (A) review membership applications; and
 - (B) conduct other business as required by the bylaws or house rules of the club.
- (b) (i) A club licensee shall maintain a minute book that is posted currently by the club licensee.
 - (ii) The minute book required by this Subsection (2) shall contain the minutes of a regular or special meeting of the governing body.
- (3) A club licensee may admit an individual as a member only on written application signed by the person, subject to:
 - (a) the person paying an application fee; and
 - (b) investigation, vote, and approval of a quorum of the governing body.
- (4) A club licensee shall:
 - (a) record an admission of a member in the official minutes of a regular meeting of the governing body; and
 - (b) whether approved or disapproved, file an application as a part of the official records of the club licensee.
- (5) The spouse of a member of a club licensee has the rights and privileges of the member:
 - (a) to the extent permitted by the bylaws or house rules of the club licensee; and
 - (b) except to the extent restricted by this title.
- (6) A minor child of a member of a club licensee has the rights and privileges of the member:
 - (a) to the extent permitted by the bylaws or house rules of the club licensee; and
 - (b) except to the extent restricted by this title.
- (7) A club licensee shall maintain:
 - (a) a current and complete membership record showing:
 - (i) the date of application of a proposed member;
 - (ii) a member's address;
 - (iii) the date the governing body approved a member's admission;
 - (iv) the date initiation fees and dues are assessed and paid; and
 - (v) the serial number of the membership card issued to a member;
 - (b) a membership list; and
 - (c) a current record indicating when a member is removed as a member or resigns.
- (8) (a) A club licensee shall have bylaws or house rules that include provisions respecting the following:
 - (i) standards of eligibility for members;
 - (ii) limitation of members, consistent with the nature and purpose of the club;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for removing a member from the club membership for the nonpayment of dues or other cause;

(v) provisions for guests; and

(vi) application fees and membership dues.

(b) A club licensee shall maintain a current copy of the club licensee's current bylaws and current house rules.

(c) A club licensee shall maintain its bylaws or house rules, and any amendments to those records, on file with the department at all times.

(9) A club licensee may, in its discretion, allow an individual to be admitted to or use the club licensed premises as a guest subject to the following conditions:

(a) the individual is allowed to use the club licensee premises only to the extent permitted by the club licensee's bylaws or house rules;

(b) the individual shall be previously authorized by a member of the club who agrees to host the individual as a guest into the club;

(c) the individual has only those privileges derived from the individual's host for the duration of the individual's visit to the club licensee premises; and

(d) a club licensee or staff of the club licensee may not enter into an agreement or arrangement with a club member to indiscriminately host a member of the general public into the club licensee premises as a guest.

(10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club licensed premises without a host if:

(a) (i) the club licensee is an equity club licensee; and

(ii) the individual is a member of an equity club licensee that has reciprocal guest privileges with the equity club licensee for which the individual is a guest;

(b) (i) the club licensee is a fraternal club licensee; and

(ii) the individual is a member of the same fraternal organization as the fraternal club licensee for which the individual is a guest; or

(c) (i) the club licensee is a fraternal club licensee that holds the fraternal club license on July 1, 2013;

(ii) the club licensee's bylaws permit guests in the club licensed premises without a host except that a minor may not be admitted as a guest without a host; and

(iii) the club licensee maintains 60% of its total club business from the sale of food, not including mix for alcoholic products, or service charges.

(11) Unless the patron is a member or guest, a club licensee may not:

(a) sell, offer for sale, or furnish an alcoholic product to the patron; or

(b) allow the patron to be admitted to or use the licensed premises.

(12) A minor may not be a member, officer, director, or trustee of a club licensee.

Amended by Chapter 349, 2013 General Session

32B-6-408. Information obtained by investigator.

(1) Subject to Subsection (2), if an investigator is permitted by another provision of this title to inspect a record of a club licensee, in addition to any other rights under

this title, the investigator may inspect, have a copy of, or otherwise review any record of the club licensee that is a visual recording of the operations of the club licensee.

(2) An investigator who is a peace officer may not inspect, have a copy of, or otherwise review a visual recording described in Subsection (1) without probable cause.

Enacted by Chapter 276, 2010 General Session

32B-6-409. Conversion from dining club license to different type of retail license.

(1) In accordance with this section, a dining club licensee may convert its dining club license to a different type of retail license, including a different type of club license during the time period:

- (a) beginning on July 1, 2011; and
- (b) ending on June 30, 2013.

(2) A dining club licensee may convert its dining license only to a retail license for which the dining club licensee qualifies.

(3) The commission shall provide a procedure for a dining club to convert to a different type of retail license as provided in this section by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) After a dining club license is converted to another type of retail license, the retail licensee shall operate under the provisions relevant to the type of retail license held by the retail licensee, except that, in accordance with Section 32B-1-201, the retail license is not considered in determining the total number of licenses available for that type of retail license.

(5) If a dining club license is converted to full-service restaurant license, limited-service restaurant license, or beer-only restaurant license, the bar structure of the dining club is considered:

- (a) a seating grandfathered bar structure for purposes of a full-service restaurant license or a limited-service restaurant license; or
- (b) a grandfathered bar structure for purposes of a beer-only restaurant license.

Enacted by Chapter 334, 2011 General Session

32B-6-501. Title.

This part is known as "Airport Lounge License."

Enacted by Chapter 276, 2010 General Session

32B-6-502. Definitions.

As used in this chapter, "total passengers" means the number of total passengers in a calendar year that is reported in the most current comprehensive annual financial report for the airport in which an airport lounge is located.

Amended by Chapter 334, 2011 General Session

32B-6-503. Commission's power to issue airport lounge license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as an airport lounge licensee, the person shall first obtain an airport lounge license from the commission in accordance with this part.

(2) The commission may issue an airport lounge license to establish airport lounge licensed premises beyond the security point at an international airport and in the numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on licensed premises operated as an airport lounge.

(3) (a) The commission may not issue a total number of airport lounge licenses for an international airport that at any time exceed one airport lounge license for each 2,500,000 of total passengers at the international airport.

(b) Notwithstanding Subsection (3)(a), the commission may not reduce the total number of airport lounge licenses unless:

(i) the commission determines that the number of total passengers is reduced by more than 25% from the last day on which the commission determined the total number of airport lounge licenses allowed for that international airport under this Subsection (3); and

(ii) the reduction can be accomplished without the international airport terminating a lease for an airport lounge before:

(A) the expiration of the lease;

(B) the airport lounge undergoes a change of ownership; or

(C) the airport lounge ceases operations.

Amended by Chapter 334, 2011 General Session

32B-6-504. Specific licensing requirements for airport lounge license.

(1) To obtain an airport lounge license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:

(a) both the written consent of the local authority and the written consent of the airport authority; and

(b) a copy of the sign proposed to be used by the airport lounge licensee on its licensed premises to inform the public that alcoholic products are sold and consumed on the licensed premises.

(2) (a) An airport lounge license expires on October 31 of each year.

(b) To renew a person's airport lounge license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for an airport lounge license is \$300.

(b) The initial license fee for an airport lounge license is \$8,000.

(c) The renewal fee for an airport lounge license is \$6,000.

(4) The bond amount required for an airport lounge license is the penal sum of \$10,000.

(5) An airport lounge license is not subject to the proximity requirements of Section 32B-1-202.

Amended by Chapter 334, 2011 General Session

32B-6-505. Specific operational requirements for an airport lounge license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an airport lounge licensee and staff of the airport lounge licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) an airport lounge licensee;
- (ii) individual staff of an airport lounge licensee; or
- (iii) both an airport lounge licensee and staff of the airport lounge licensee.

(2) In addition to complying with Subsection 32B-5-301(3), an airport lounge licensee shall display in a prominent place in the airport lounge:

(a) a list of the types and brand names of liquor being furnished through airport lounge licensee's calibrated metered dispensing system; and

(b) a sign to inform the public that alcoholic products are sold and consumed on the licensed premises.

(3) Notwithstanding Section 32B-5-307:

(a) An airport lounge licensee may not permit a patron to bring a bottled wine onto the premises of the retail licensee.

(b) An airport lounge licensee may not permit a patron to remove an alcoholic product from the licensed premises.

(4) (a) A server of an alcoholic product in an airport lounge licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) An airport lounge licensee may not sell, offer for sale, or furnish an alcoholic product at an airport lounge on any day during a period that:

- (a) begins at midnight; and
- (b) ends at 7:59 a.m.

(6) (a) Subject to the other provisions of this Subsection (6), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have two spirituous liquor drinks before the patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under this Subsection (6).

(7) An airport lounge licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, furnishing, or consumption of liquor menu including:

- (a) a set-up charge;
- (b) a service charge; or
- (c) a chilling fee.

(8) An airport lounge liquor licensee's premises may not be leased for a private

event.

Enacted by Chapter 276, 2010 General Session

32B-6-601. Title.

This part is known as "On-premise Banquet License."

Enacted by Chapter 276, 2010 General Session

32B-6-602. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-6-603. Commission's power to issue on-premise banquet license -- Contracts as host.

(1) (a) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product in connection with the person's banquet and room service activities at one of the following, the person shall first obtain an on-premise banquet license in accordance with this part:

- (i) a hotel;
- (ii) a resort facility;
- (iii) a sports center; or
- (iv) a convention center.

(b) This part does not prohibit an alcoholic product on the premises of a person listed in Subsection (1)(a) to the extent otherwise permitted by this title.

(c) This section does not prohibit a person who applies for an on-premise banquet license to also apply for a package agency if otherwise qualified.

(2) The commission may issue an on-premise banquet license to establish on-premise banquet licensees in the numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product at a banquet or as part of room service activities operated by an on-premise banquet licensee.

(3) Subject to Section 32B-1-201, the commission may not issue a total number of on-premise banquet licenses that at any time exceed the number determined by dividing the population of the state by 30,000.

(4) Pursuant to a contract between the host of a banquet and an on-premise banquet licensee:

(a) the host of the banquet may request an on-premise banquet licensee to provide an alcoholic product served at the banquet; and

(b) an on-premise banquet licensee may provide an alcoholic product served at the banquet.

(5) At a banquet, an on-premise banquet licensee may furnish an alcoholic product:

(a) without charge to a patron at a banquet, except that the host of the banquet shall pay for an alcoholic product furnished at the banquet; or

- (b) with a charge to a patron at the banquet.

Amended by Chapter 334, 2011 General Session

32B-6-604. Specific licensing requirements for an on-premise banquet license.

(1) To obtain an on-premise banquet license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) An on-premise banquet license expires on October 31 of each year.

(b) To renew a person's on-premise banquet license, a person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for an on-premise banquet license is \$300.

(b) The initial license fee for an on-premise banquet license is \$750.

(c) The renewal fee for an on-premise banquet license is \$750.

(4) The bond amount required for an on-premise banquet license is the penal sum of \$10,000.

(5) Notwithstanding the other provisions of this part, if an applicant is a state agency or political subdivision of the state it is not required to:

(a) pay an application fee, initial license fee, or renewal fee;

(b) obtain the written consent of the local authority;

(c) submit a copy of the applicant's current business license; or

(d) post a bond as specified by Section 32B-5-204.

(6) Notwithstanding Subsection 32B-5-303(3), the department may approve an additional location in or on the licensed premises of an on-premise banquet licensee from which the on-premise banquet licensee may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product that is not included in its original application only:

(a) upon proper application by an on-premise banquet licensee; and

(b) in accordance with guidelines approved by the commission.

Amended by Chapter 334, 2011 General Session

32B-6-605. Specific operational requirements for on-premise banquet license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an on-premise banquet licensee and staff of the on-premise banquet licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an on-premise banquet licensee;

(ii) individual staff of an on-premise banquet licensee; or

(iii) both an on-premise banquet licensee and staff of the on-premise banquet licensee.

(2) An on-premise banquet licensee shall comply with Subsections 32B-5-301(4)

and (5) for the entire premises of the hotel, resort facility, sports center, or convention center that is the basis for the on-premise banquet license.

(3) (a) For the purpose described in Subsection (3)(b), an on-premise banquet licensee shall provide the department with advance notice of a scheduled banquet in accordance with rules made by the commission.

(b) Any of the following may conduct a random inspection of a banquet:

- (i) an authorized representative of the commission or the department; or
- (ii) a law enforcement officer.

(4) (a) An on-premise banquet licensee is not subject to Section 32B-5-302, but shall make and maintain the records the commission or department requires.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) (a) Except as otherwise provided in this title, an on-premise banquet licensee may sell, offer for sale, or furnish an alcoholic product at a banquet only for consumption at the location of the banquet.

(b) A host of a banquet, a patron, or a person other than the on-premise banquet licensee or staff of the on-premise banquet licensee, may not remove an alcoholic product from the premises of the banquet.

(c) Notwithstanding Section 32B-5-307, a patron at a banquet may not bring an alcoholic product into or onto, or remove an alcoholic product from the premises of a banquet.

(6) (a) An on-premise banquet licensee may not leave an unsold alcoholic product at the banquet following the conclusion of the banquet.

(b) At the conclusion of a banquet, an on-premise banquet licensee shall:

- (i) destroy an opened and unused alcoholic product that is not saleable, under conditions established by the department; and
- (ii) return to the on-premise banquet licensee's approved locked storage area any:

(A) opened and unused alcoholic product that is saleable; and

(B) unopened container of an alcoholic product.

(c) Except as provided in Subsection (6)(b) with regard to an open or sealed container of an alcoholic product not sold or consumed at a banquet, an on-premise banquet licensee:

(i) shall store the alcoholic product in the on-premise banquet licensee's approved locked storage area; and

(ii) may use the alcoholic product at more than one banquet.

(7) Notwithstanding Section 32B-5-308, an on-premise banquet licensee may not employ a minor to sell, furnish, or dispense an alcoholic product in connection with the on-premise banquet licensee's banquet and room service activities.

(8) An on-premise banquet licensee may not sell, offer for sale, or furnish an alcoholic product at a banquet or in connection with room service any day during a period that:

(a) begins at 1 a.m.; and

(b) ends at 9:59 a.m.

(9) An on-premise banquet licensee shall maintain at least 50% of its total annual banquet gross receipts from the sale of food, not including:

- (a) mix for an alcoholic product; and
 - (b) a charge in connection with the furnishing of an alcoholic product.
- (10) (a) Subject to the other provisions of this Subsection (10), a patron may not have more than two alcoholic products of any kind at a time before the patron.
- (b) A patron may not have more than one spirituous liquor drink at a time before the patron.
- (c) An individual portion of wine is considered to be one alcoholic product under Subsection (10)(a).
- (11) (a) An on-premise banquet licensee shall supervise and direct a person involved in the sale, offer for sale, or furnishing of an alcoholic product.
- (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product shall complete an alcohol training and education seminar.
- (12) A staff person of an on-premise banquet licensee shall remain at the banquet at all times when an alcoholic product is sold, offered for sale, furnished, or consumed at the banquet.
- (13) (a) Room service of an alcoholic product to a guest room of a hotel or resort facility shall be provided in person by staff of an on-premise banquet licensee only to an adult guest in the guest room.
- (b) An alcoholic product may not be left outside a guest room for retrieval by a guest.

Amended by Chapter 307, 2011 General Session
Amended by Chapter 334, 2011 General Session

32B-6-701. Title.

This part is known as "On-premise Beer Retailer License."

Enacted by Chapter 276, 2010 General Session

32B-6-702. Definitions.

As used in this part, "recreational amenity" is defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. A rule made under this section shall define "recreational amenity" to be one or more of the following or an activity substantially similar to one of the following:

- (1) a billiard parlor;
- (2) a pool parlor;
- (3) a bowling facility;
- (4) a golf course;
- (5) miniature golf;
- (6) a golf driving range;
- (7) a tennis club;
- (8) a sports facility that hosts professional sporting events and has a seating capacity equal to or greater than 6,500;
- (9) a concert venue that has a seating capacity equal to or greater than 6,500;
- (10) one of the following if owned by a government agency:
 - (a) a convention center;

- (b) a fair facility;
- (c) an equestrian park;
- (d) a theater; or
- (e) a concert venue;
- (11) an amusement park:
 - (a) with one or more permanent amusement rides; and
 - (b) located on at least 50 acres;
- (12) a ski resort;
- (13) a venue for live entertainment if the venue:
 - (a) is not regularly open for more than five hours on any day;
 - (b) is operated so that food is available whenever beer is sold, offered for sale, or furnished at the venue; and
 - (c) is operated so that no more than 15% of its total annual receipts are from the sale of beer; or
- (14) concessions operated within the boundary of a park administered by the:
 - (a) Division of Parks and Recreation; or
 - (b) National Parks Service.

Amended by Chapter 2, 2011 Special Session 2

32B-6-703. Commission's power to issue on-premise beer retailer license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise beer retailer license from the commission in accordance with this part.

(2) (a) The commission may issue an on-premise beer retailer license to establish on-premise beer retailer licensed premises at places and in numbers as the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as an on-premise beer retailer.

(b) At the time that the commission issues an on-premise beer retailer license, the commission shall designate whether the on-premise beer retailer is a tavern.

(c) The commission may change its designation of whether an on-premise beer retailer is a tavern in accordance with rules made by the commission.

(d) (i) In determining whether an on-premise beer retailer is a tavern, the commission shall determine whether the on-premise beer retailer will engage primarily in the retail sale of beer for consumption on the establishment's premises.

(ii) In making a determination under this Subsection (2)(d), the commission shall consider:

(A) whether the on-premise beer retailer will operate as one of the following:

- (I) a beer bar;
- (II) a parlor;
- (III) a lounge;
- (IV) a cabaret; or
- (V) a nightclub;

(B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

(I) whether the on-premise beer retailer will sell food in the establishment; and
(II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer will exceed the revenue of the sale of food;

(C) whether full meals including appetizers, main courses, and desserts will be served;

(D) the square footage and seating capacity of the premises;

(E) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;

(F) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person that is located on the premises of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(G) whether the entertainment provided on the premises of the beer retailer will be suitable for minors; and

(H) the beer retailer management's ability to manage and operate an on-premise beer retailer license including:

(I) management experience;

(II) past beer retailer management experience; and

(III) the type of management scheme that will be used by the beer retailer.

(e) On or after March 1, 2012:

(i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:

(A) maintain at least 70% of the person's total gross revenues from business directly related to a recreational amenity on or directly adjoining the licensed premises of the beer retailer; or

(B) have a recreational amenity on or directly adjoining the licensed premises of the beer retailer and maintain at least 70% of the person's total gross revenues from the sale of food.

(ii) The commission may not license a person as an on-premise beer retailer if the person does not:

(A) meet the requirements of Subsection (2)(e)(i); or

(B) operate as a tavern.

(iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1, 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).

(B) If an on-premise beer retailer fails to notify the department as required by Subsection (2)(e)(iii)(A), the on-premise beer retailer's license expires as of February 29, 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer retailer is required to apply as a new licensee, and any bar or bar structure on the premises of an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i) will not be grandfathered under Subsection 32B-6-902(1).

(iv) A person who, after August 1, 2011, applies for an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or construct facilities for the dispensing or storage of an alcoholic product

that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii).

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of on-premise beer retailer licenses that are taverns that at any time exceeds the number determined by dividing the population of the state by 54,147.

(b) The commission may issue a seasonal on-premise beer retailer license for a tavern in accordance with Section 32B-5-206.

(4) (a) Unless otherwise provided in Subsection (4)(b):

(i) only one on-premise beer retailer license is required for each building or resort facility owned or leased by the same person; and

(ii) a separate license is not required for each retail beer dispensing location in the same building or on the same resort premises owned or operated by the same person.

(b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the building or resort facility operates in the same manner.

(ii) If each retail beer dispensing location does not operate in the same manner:

(A) one on-premise beer retailer license designated as a tavern is required for the locations in the same building or on the same resort premises that operate as a tavern; and

(B) one on-premise beer retailer license is required for the locations in the same building or on the same resort premises that do not operate as a tavern.

Amended by Chapter 2, 2011 Special Session 2

32B-6-704. Local authority to issue a license.

(1) A local authority may issue a license to operate as an on-premise beer retailer, subject to:

(a) the requirement under this part that a person obtain an on-premise beer retailer license issued by the commission to operate as an on-premise beer retailer; and

(b) subject to Title 11, Chapter 10, Businesses Allowing Consumption of an Alcoholic Product on Premises.

(2) For a violation of this title, rules of the commission, or a local ordinance, a local authority may suspend or revoke a business license described in Subsection (1).

(3) (a) If the commission suspends or revokes an on-premise beer retailer license issued by the commission under this title, the on-premise beer retailer may not continue to operate under a license issued by a local authority.

(b) If a local authority suspends or revokes a business license described in Subsection (1), an on-premise beer retailer may not continue to operate under the on-premise beer retailer license issued by the commission.

(4) A person issued a business license issued by a local authority as described in Subsection (1) shall comply with this title, including a provision related to the storage, sale, offer for sale, furnishing, consumption, warehousing, or distribution of beer.

Enacted by Chapter 276, 2010 General Session

32B-6-705. Specific licensing requirements for on-premise beer retailer

license.

(1) To obtain an on-premise beer retailer license a person shall comply with Chapter 5, Part 2, Retail Licensing Process, except that an on-premise beer retailer is required to carry dramshop insurance coverage in accordance with Section 32B-5-201 only if the on-premise beer retailer sells more than \$5,000 of beer annually.

(2) (a) An on-premise beer retailer license expires on the last day of February each year.

(b) To renew a person's on-premise beer retailer license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January 31.

(3) (a) The nonrefundable application fee for an on-premise beer retailer license is \$300.

(b) (i) The initial license fee for an on-premise beer retailer license that is not a tavern is \$300.

(ii) The initial license fee for an on-premise beer retailer license that is a tavern is \$1,500.

(c) (i) The renewal fee for an on-premise beer retailer license that is not a tavern is \$350.

(ii) The renewal fee for an on-premise beer retailer license that is a tavern is \$1,250.

(4) The bond amount required for an on-premise beer retailer license is the penal sum of \$5,000.

(5) Notwithstanding the other provisions of this part, if an applicant is a state agency or political subdivision of the state it is not required to:

(a) pay an application fee, initial license fee, or renewal fee;

(b) obtain the written consent of the local authority;

(c) submit a copy of the applicant's current business license; or

(d) post a bond as specified by Section 32B-5-204.

Amended by Chapter 2, 2011 Special Session 2

32B-6-706. Specific operational requirements for on-premise beer retailer license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an on-premise beer retailer;

(ii) individual staff of an on-premise beer retailer; or

(iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

(2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make and maintain the records the department requires.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not

store or sell liquor on its licensed premises.

(4) Beer sold in a sealed container by an on-premise beer retailer may be removed from the on-premise beer retailer premises in the sealed container.

(5) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at its licensed premises during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) (i) Notwithstanding Subsection (5)(a), a tavern shall remain open for one hour after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern may finish consuming a single serving of beer not exceeding 26 ounces.

(ii) A tavern is not required to remain open:

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a tavern.

(7) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of Subsection (7)(a)(i) is a class A misdemeanor.

(b) (i) If an on-premise beer retailer purchases beer under this Subsection (7) from a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

(ii) Violation of Subsection (7)(b)(i) is a class B misdemeanor.

(8) A tavern shall comply with Section 32B-1-407.

Amended by Chapter 2, 2011 Special Session 2

32B-6-707. Application of part to other retail license type.

(1) A retail licensee who is not an on-premise beer retailer, but who sells, offers for sale, or furnishes beer pursuant to a different part under this chapter:

(a) may sell, offer for sale, or furnish beer without obtaining a separate on-premise beer retailer license from the commission; and

(b) shall comply with the operational requirements under this part that apply to an on-premise beer retailer, except when a requirement of this part is inconsistent with or less restrictive than an operational requirement under the relevant part under this chapter for the type of retail license.

(2) Failure of a retail licensee or staff of the retail licensee to comply with a requirement of this part may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(a) a retail licensee;

(b) individual staff of a retail licensee; or

(c) both a retail licensee and staff of the retail licensee.

Enacted by Chapter 276, 2010 General Session

32B-6-708. Information obtained by investigator.

(1) Subject to Subsection (2), if an investigator is permitted by another provision of this title to inspect a record of an on-premise beer retailer that is a tavern, in addition to any other rights under this title, the investigator may inspect, have a copy of, or otherwise review any record of the tavern that is a visual recording of the operations of the tavern.

(2) An investigator who is a peace officer may not inspect, have a copy of, or otherwise review a visual recording described in Subsection (1) without probable cause.

Enacted by Chapter 276, 2010 General Session

32B-6-801. Title.

This part is known as "Reception Center License."

Enacted by Chapter 334, 2011 General Session

32B-6-802. Definitions.

Reserved

Enacted by Chapter 334, 2011 General Session

32B-6-803. Commission's power to issue reception center license.

(1) Before a person may store, sell, offer for sale, or furnish an alcoholic product on its premises as a reception center, the person shall first obtain a reception center license from the commission in accordance with this part.

(2) The commission may issue a reception center license to establish reception center licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated as a reception center.

(3) Subject to Section 32B-1-201, the commission may not issue a total number of reception center licenses that at any time exceeds the number determined by dividing the population of the state by 56,313.

(4) The commission may not issue a reception center license for premises that do not meet the proximity requirements of Section 32B-1-202.

Enacted by Chapter 334, 2011 General Session

32B-6-804. Specific licensing requirements for reception center license.

(1) To obtain a reception center license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) A reception center license expires on October 31 of each year.

(b) To renew a person's reception center license, a person shall comply with the

renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

- (3) (a) The nonrefundable application fee for a reception center license is \$300.
- (b) The initial license fee for a reception center license is \$750.
- (c) The renewal fee for a reception center license is \$750.
- (4) The bond amount required for a reception center license is the penal sum of \$10,000.

Enacted by Chapter 334, 2011 General Session

32B-6-805. Specific operational requirements for a reception center license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a reception center licensee and staff of the reception center licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a reception center licensee;
- (ii) individual staff of a reception center licensee; or
- (iii) both a reception center licensee and staff of the reception center licensee.

(2) In addition to complying with Section 32B-5-303, a reception center licensee shall store an alcoholic product in a storage area described in Subsection (15)(a).

(3) (a) For the purpose described in Subsection (3)(b), a reception center licensee shall provide the following with advance notice of a scheduled event in accordance with rules made by the commission:

- (i) the department; and
- (ii) the local law enforcement agency responsible for the enforcement of this title in the jurisdiction where the reception center is located.

(b) Any of the following may conduct a random inspection of an event:

- (i) an authorized representative of the commission or the department; or
- (ii) a law enforcement officer.

(4) (a) Except as otherwise provided in this title, a reception center licensee may sell, offer for sale, or furnish an alcoholic product at an event only for consumption at the reception center's licensed premises.

(b) A host of an event, a patron, or a person other than the reception center licensee or staff of the reception center licensee, may not remove an alcoholic product from the reception center's licensed premises.

(c) Notwithstanding Section 32B-5-307, a patron at an event may not bring an alcoholic product into or onto, or remove an alcoholic product from, the reception center.

(5) (a) A reception center licensee may not leave an unsold alcoholic product at an event following the conclusion of the event.

(b) At the conclusion of an event, a reception center licensee shall:

- (i) destroy an opened and unused alcoholic product that is not saleable, under conditions established by the department; and
- (ii) return to the reception center licensee's approved locked storage area any:

(A) opened and unused alcoholic product that is saleable; and
(B) unopened container of an alcoholic product.
(c) Except as provided in Subsection (5)(b) with regard to an open or sealed container of an alcoholic product not sold or consumed at an event, a reception center licensee:

- (i) shall store the alcoholic product in accordance with Subsection (2); and
- (ii) may use the alcoholic product at more than one event.

(6) Notwithstanding Section 32B-5-308, a reception center licensee may not employ a minor in connection with an event at the reception center at which food is not made available.

(7) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a reception center licensee.

(8) A reception center licensee may not sell, offer for sale, or furnish an alcoholic product at the licensed premises on any day during the period that:

- (a) begins at 1 a.m.; and
- (b) ends at 9:59 a.m.

(9) (a) A reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product, which includes:

- (i) mix for an alcoholic product; or
- (ii) a charge in connection with the furnishing of an alcoholic product.

(b) A reception center licensee shall report the information necessary to show compliance with this Subsection (9) to the department on an annual basis.

(10) A reception center licensee may not sell, offer for sale, or furnish an alcoholic product at an event at which a minor is present unless the reception center licensee makes food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed during the event.

(11) (a) Subject to the other provisions of this Subsection (11), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) An individual portion of wine is considered to be one alcoholic product under Subsection (11)(a).

(12) (a) A reception center licensee shall supervise and direct a person involved in the sale, offer for sale, or furnishing of an alcoholic product.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product shall complete an alcohol training and education seminar.

(13) A staff person of a reception center licensee shall remain at an event at all times when an alcoholic product is sold, offered for sale, furnished, or consumed at the event.

(14) A reception center licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure.

(15) Except as provided in Subsection (16), a reception center licensee may dispense an alcoholic product only if:

- (a) the alcoholic product is dispensed from an area that is:
 - (i) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

- (A) not readily visible to a patron; and
- (B) not accessible by a patron; and
- (ii) apart from an area used:
 - (A) for staging; or
 - (B) as a lobby or waiting area;
- (b) the reception center licensee uses an alcoholic product that is:
 - (i) stored in an area described in Subsection (15)(a); or
 - (ii) in an area not described in Subsection (15)(a) on the licensed premises and:
 - (A) immediately before the alcoholic product is dispensed it is in an unopened container;
 - (B) the unopened container is taken to an area described in Subsection (15)(a) before it is opened; and
 - (C) once opened, the container is stored in an area described in Subsection (15)(a); and
 - (c) any instrument or equipment used to dispense an alcoholic product is located in an area described in Subsection (15)(a).
- (16) A reception center licensee may dispense an alcoholic product from a mobile serving area that:
 - (a) is moved only by staff of the reception center licensee;
 - (b) is capable of being moved by only one individual; and
 - (c) is no larger than 6 feet long and 30 inches wide.
- (17) (a) A reception center licensee may not have an event on the licensed premises except pursuant to a contract between a third party host of the event and the reception center licensee under which the reception center licensee provides an alcoholic product sold, offered for sale, or furnished at an event.
 - (b) At an event, a reception center licensee may furnish an alcoholic product:
 - (i) without charge to a patron, except that the third party host of the event shall pay for an alcoholic product furnished at the event; or
 - (ii) with a charge to a patron at the event.
 - (c) The commission may by rule define what constitutes a "third-party host" for purposes of this Subsection (17) so that a reception center licensee and the third-party host are not owned by or operated by the same persons, except that the rule shall permit a reception center licensee to host an event for an immediate family member of the reception center licensee.
- (18) A reception center licensee shall have culinary facilities that are:
 - (a) adequate to prepare a full meal; and
 - (b) (i) located on the licensed premises; or
 - (ii) under the same control as the reception center licensee.
- (19) (a) Except as provided in Subsection (19)(b), a reception center licensee may not operate an event:
 - (i) that is open to the general public; and
 - (ii) at which an alcoholic product is sold or offered for sale.
- (b) A reception center licensee may operate an event described in Subsection (19)(a) if the event is hosted:
 - (i) at the reception center no more frequently than once a calendar year; and
 - (ii) by a nonprofit organization that is organized and qualified under Section

501(c), Internal Revenue Code.

Amended by Chapter 365, 2012 General Session

32B-6-901. Title.

This part is known as "Beer-only Restaurant License."

Enacted by Chapter 334, 2011 General Session

32B-6-902. Definitions.

(1) (a) As used in this part, "grandfathered bar structure" means a bar structure in a licensed premises of a beer-only restaurant licensee that:

(i) was licensed as an on-premise beer retailer as of August 1, 2011, and as of August 1, 2011:

(A) is operational;

(B) has facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii); and

(C) in accordance with Subsection 32B-6-703(2)(e), notifies the department that effective March 1, 2012, the on-premise beer retailer licensee will seek to be licensed as a beer-only restaurant; or

(ii) is a bar structure grandfathered under Section 32B-6-409.

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(2) Subject to Subsection (1)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

Amended by Chapter 2, 2011 Special Session 2

32B-6-903. Commission's power to issue beer-only restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on its premises as a beer-only restaurant, the person shall first obtain a beer-only restaurant license from the commission in accordance with this part.

(2) (a) The commission may issue a beer-only restaurant license to establish beer-only restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as a beer-only restaurant.

(b) A person may not sell, offer for sale, furnish, or allow the consumption of liquor on the licensed premises of a beer-only restaurant licensee.

(3) (a) Only one beer-only restaurant license is required for each building or resort facility owned or leased by the same person.

(b) A separate license is not required for each beer-only restaurant license dispensing location in the same building or on the same resort premises owned or operated by the same person.

(4) (a) Except as provided in Subsection (4)(b) or (c), the commission may not

issue a beer-only restaurant license for premises that do not meet the proximity requirements of Section 32B-1-202.

(b) With respect to the premises of a beer-only restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a beer-only restaurant license to the new owner of the premises if:

(i) when a beer-only restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);

(ii) the premises has had a beer-only restaurant license at all times since the beer-only restaurant license described in Subsection (4)(b)(i) was issued without a variance; and

(iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the beer-only restaurant license described in Subsection (4)(b)(i) was issued.

(c) The location of the licensed premises of an on-premise beer retailer who is licensed as of July 1, 2011, is grandfathered and not required to meet the proximity requirements of Section 32B-1-202 if the on-premise beer retailer obtains a beer-only restaurant license by not later than March 1, 2012. A location grandfathered under this Subsection (4)(c) is considered grandfathered notwithstanding that the beer-only restaurant license undergoes a change of ownership.

Enacted by Chapter 334, 2011 General Session

32B-6-904. Specific licensing requirements for beer-only restaurant license.

(1) To obtain a beer-only restaurant license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) A beer-only restaurant license expires the last day of February of each year.

(b) To renew a person's beer-only restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than January 31.

(3) (a) The nonrefundable application fee for a beer-only restaurant license is \$330.

(b) The initial license fee for a beer-only restaurant license is \$825.

(c) The renewal fee for a beer-only restaurant license is \$605.

(4) The bond amount required for a beer-only restaurant license is the penal sum of \$5,000.

Amended by Chapter 1, 2012 Special Session 4

32B-6-905. Specific operational requirements for a beer-only restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a beer-only restaurant licensee;
- (ii) individual staff of a beer-only restaurant licensee; or
- (iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

(2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of liquor.

(b) Liquor may not be on the premises of a beer-only restaurant licensee except for use:

- (i) as a flavoring on a dessert; and
- (ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a beer-only restaurant licensee shall store beer in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves beer in a beer-only restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of beer ordered or consumed.

(5) A person's willingness to serve beer may not be made a condition of employment as a server with a beer-only restaurant licensee.

(6) A beer-only restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer, except that a beer-only restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.

(7) A beer-only restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A beer-only restaurant may not sell, offer for sale, or furnish beer except after the beer-only restaurant licensee confirms that the patron has the intent to order food prepared, sold, and furnished at the licensed premises.

(b) A beer-only restaurant shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) A patron may not have more than two beers at a time before the patron.

(10) A patron may consume a beer only:

- (a) at:
 - (i) the patron's table;
 - (ii) a grandfathered bar structure; or
 - (iii) a counter; and
- (b) where food is served.

(11) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish a beer to a patron, and a patron may not consume an alcoholic product at a bar structure.

(b) Notwithstanding Subsection (11)(a), at a grandfathered bar structure, a patron who is 21 years of age or older may:

- (i) sit;
- (ii) be furnished a beer; and
- (iii) consume a beer.

(c) Except as provided in Subsection (11)(d), at a grandfathered bar structure, a beer-only restaurant licensee may not permit a minor to, and a minor may not:

- (i) sit; or
- (ii) consume food or beverages.

(d) (i) A minor may be at a grandfathered bar structure if the minor is employed by a beer-only restaurant licensee:

- (A) as provided in Subsection 32B-5-308(2); or
- (B) to perform maintenance and cleaning services during an hour when the beer-only restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a beer-only restaurant licensee's premises in which the minor is permitted to be.

(12) A beer-only restaurant licensee may dispense a beer only if:

- (a) the beer is dispensed from an area that is:
 - (i) a grandfathered bar structure; or
 - (ii) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are not readily visible to a patron, not accessible by a patron, and apart from an area used for dining, for staging, or as a lobby or waiting area;

(b) the beer-only restaurant licensee uses a beer that is:

- (i) stored in an area described in Subsection (12)(a); or
- (ii) in an area not described in Subsection (12)(a) on the licensed premises and:
 - (A) immediately before the beer is dispensed it is in an unopened container;
 - (B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and

(C) once opened, the container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense the beer is located in an area described in Subsection (12)(a).

Amended by Chapter 353, 2013 General Session

32B-7-101. Title.

This chapter is known as the "Off-premise Beer Retailer Act."

Enacted by Chapter 276, 2010 General Session

32B-7-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-7-201. State and local licensing -- Limitations.

- (1) Subject to the other provisions of this title, a local authority may:
 - (a) tax or prohibit the retail sale of beer;

- (b) subject to this part, issue, suspend, and revoke a local license to sell beer at retail for off-premise consumption;
 - (c) establish proximity requirements for establishing premises where beer is sold at retail for off-premise consumption in relation to any community location; and
 - (d) otherwise regulate the retail sale of beer for off-premise consumption subject to the requirements of Section 32B-7-202 and Part 3, Off-premise Beer Retailer Enforcement Act.
- (2) A local authority may not issue to a minor a local license to sell beer at retail for off-premise consumption.

Enacted by Chapter 276, 2010 General Session

32B-7-202. General operational requirements for off-premise beer retailer.

- (1) (a) An off-premise beer retailer or staff of the off-premise beer retailer shall comply with this section.
- (b) Failure to comply with this section may result in a suspension or revocation of a local license.
- (2) (a) (i) An off-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer, except beer that the off-premise beer retailer lawfully purchases from:
- (A) a beer wholesaler licensee; or
 - (B) a small brewer that manufactures the beer.
- (ii) A violation of Subsection (2)(a) is a class A misdemeanor.
- (b) (i) If an off-premise beer retailer purchases beer under this Subsection (2) from a beer wholesaler licensee, the off-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.
- (ii) A violation of Subsection (2)(b) is a class B misdemeanor.
- (3) An off-premise beer retailer may not possess, sell, offer for sale, or furnish beer in a container larger than two liters.
- (4) A minor may not sell beer on the licensed premises of an off-premise beer retailer unless:
- (a) the sale is done under the supervision of a person 21 years of age or older who is on the licensed premises; and
 - (b) the minor is at least 16 years of age.
- (5) (a) Subject to the other provisions of this Subsection (5), an off-premise beer retailer shall:
- (i) display beer sold by the off-premise beer retailer in an area that is visibly separate and distinct from the area where nonalcoholic beverages are displayed; and
 - (ii) display a sign in the area described in Subsection (5)(a)(i) that:
 - (A) is prominent;
 - (B) is easily readable by a consumer;
 - (C) meets the requirements for format established by the commission by rule;
- and

(D) reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully."

(b) Notwithstanding Subsection (5)(a), a nonalcoholic beer may be displayed with beer if the nonalcoholic beer is labeled, packaged, or advertised as a nonalcoholic beer.

(c) The requirements of this Subsection (5) apply to beer notwithstanding that it is labeled, packaged, or advertised as:

- (i) a malt cooler; or
- (ii) a beverage that may provide energy.

(d) The commission shall define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed."

(e) A violation of this Subsection (5) is an infraction.

(6) (a) Staff of an off-premise beer retailer who directly supervises the sale of beer or who sells beer to a patron for consumption off the premises of the off-premise beer retailer shall wear a unique identification badge:

- (i) on the front of the staff's clothing;
- (ii) visible above the waist;
- (iii) bearing the staff's:
 - (A) first or last name;
 - (B) initials; or
 - (C) unique identification in letters or numbers; and
- (iv) with the number or letters on the unique identification badge being sufficiently large to be clearly visible and identifiable while engaging in or directly supervising the retail sale of beer.

(b) An off-premise beer retailer shall make and maintain a record of each current staff's unique identification badge assigned by the off-premise beer retailer that includes the staff's:

- (i) full name;
- (ii) address; and
- (iii) (A) driver license number; or
- (B) similar identification number.

(c) An off-premise beer retailer shall make available a record required to be made or maintained under this Subsection (6) for immediate inspection by:

- (i) a peace officer; or
- (ii) a representative of the local authority that issues the off-premise beer retailer license.

(d) A local authority may impose a fine of up to \$250 against an off-premise beer retailer that does not comply or require its staff to comply with this Subsection (6).

Amended by Chapter 307, 2011 General Session

32B-7-301. Title.

This part is known as the "Off-premise Beer Retailer Enforcement Act."

Enacted by Chapter 276, 2010 General Session

32B-7-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-7-303. Penalties related to sales to minors.

(1) (a) In addition to any criminal penalty that may be imposed, an individual is subject to the administrative penalties described in Subsection (1)(b) imposed by a local authority if:

- (i) the individual completes an alcohol training and education seminar;
- (ii) after completing the alcohol training and education seminar, the individual is found in violation of a law involving the sale of an alcoholic product to a minor;
- (iii) the violation described in Subsection (1)(a)(ii) is based on conduct that occurs while the individual is on duty as staff of an off-premise beer retailer; and
- (iv) the local authority brings an adjudicative proceeding against the individual.

(b) If the conditions of Subsection (1)(a) are met, a local authority shall impose the following administrative penalties:

(i) upon a first violation, the individual may not sell or directly supervise the sale of beer to a patron for consumption off the premises of the off-premise beer retailer until the individual retakes and completes an alcohol training and education seminar;

(ii) upon a second violation, the individual may not sell or directly supervise the sale of beer to a patron for consumption off the premises of the off-premise beer retailer until the later of:

(A) 90 days from the day on which the administrative penalty is imposed; and

(B) the day on which the individual:

(I) retakes and completes the alcohol training and education seminar; and

(II) completes any additional training that the local authority may require; and

(iii) upon a third or subsequent violation, the individual may not sell or directly supervise the sale of beer to a patron for consumption off the premises of the off-premise beer retailer until the later of:

(A) one year from the day on which the administrative penalty is imposed; and

(B) the day on which the individual:

(I) retakes and completes an alcohol training and education seminar; and

(II) completes any additional training that the local authority may require.

(2) (a) During the time period in which an individual is prohibited from selling or directly supervising the sale of beer under Subsection (1)(b), an off-premise beer retailer may not allow that individual to:

(i) directly supervise the sale of beer for the off-premise beer retailer; or

(ii) sell beer for the off-premise beer retailer.

(b) A violation of this Subsection (2) is grounds for the immediate suspension of the off-premise beer retailer's license.

(3) (a) In addition to any criminal penalty that may be imposed, an off-premise beer retailer is subject to the administrative penalties imposed by a local authority described in Subsection (3)(b) if:

(i) staff of the off-premise beer retailer is found in violation of a law involving the sale of an alcoholic product to a minor;

(ii) the violation described in Subsection (3)(a)(i) occurs while the staff is on duty for the off-premise beer retailer; and

(iii) the local authority brings an adjudicative proceeding against the off-premise beer retailer.

(b) If the conditions of Subsection (3)(a) are met, a local authority shall impose the following administrative penalties:

(i) upon a first violation, the local authority shall issue a written warning against an off-premise beer retailer;

(ii) upon a second violation, an off-premise beer retailer shall pay a civil fine of \$250;

(iii) upon a third violation, an off-premise beer retailer shall pay a civil fine of \$500;

(iv) upon a fourth or subsequent violation, an off-premise beer retailer shall:

(A) pay a civil fine of \$500;

(B) have its off-premise beer retailer license suspended for a period of 30 consecutive days from the date on which the administrative penalty is imposed; and

(C) be placed on probation for a period of one year from the date on which the administrative penalty is imposed; and

(v) upon any violation by the off-premise beer retailer or any on-duty staff of the off-premise beer retailer during the period of probation specified in Subsection (3)(b)(iv)(C):

(A) the off-premise beer retailer's license to sell beer shall be revoked; and

(B) the off-premise beer retailer may not reapply for a new license for at least six months from the date of revocation.

(4) (a) An off-premise beer retailer's failure to pay a fine imposed under Subsection (3) within 30 days of the day on which a fine is imposed is grounds for the immediate suspension of the off-premise beer retailer's license to sell beer until payment is made.

(b) An off-premise beer retailer's failure to pay the fine described in Subsection (4)(a) within the time period described in Subsection (4)(a) is grounds for revocation of the off-premise beer retailer's license.

Enacted by Chapter 276, 2010 General Session

32B-7-304. Hearings.

(1) A local authority shall conduct a hearing under this part if one of the following requests a hearing before the local authority:

(a) an off-premise beer retailer;

(b) an individual who directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or

(c) an individual who sells beer to a patron for consumption off the premises of the off-premise beer retailer.

(2) A local authority conducting a hearing under this section shall provide the person requesting the hearing:

(a) notice of the hearing; and

(b) an opportunity to be heard at the hearing.

Enacted by Chapter 276, 2010 General Session

32B-7-305. Tracking of enforcement actions -- Costs of enforcement actions.

(1) A local authority that pursuant to this part adjudicates an administrative penalty for a violation of a law involving the sale of an alcoholic product to a minor, shall:

(a) maintain a record of an adjudicated violation until the record is expunged under Subsection (3);

(b) include in the record described in Subsection (1)(a):

(i) the name of the individual who commits the violation;

(ii) the name of the off-premise beer retailer for whom the individual is a staff member at the time of the violation; and

(iii) the date of the adjudication of the violation; and

(c) provide the information described in Subsection (1)(b) to the Highway Safety Office of the Department of Public Safety within 30 days of the date on which a violation is adjudicated.

(2) (a) The Highway Safety Office shall develop and operate a system to collect, analyze, maintain, track, and disseminate the violation history information received under Subsection (1).

(b) The Highway Safety Office shall make the system described in Subsection (2)(a) available to:

(i) assist a local authority in assessing administrative penalties under Section 32B-7-303; and

(ii) inform an off-premise beer retailer of an individual who has an administrative violation history under Section 32B-7-303.

(c) The Highway Safety Office shall maintain a record of violation history information received pursuant to Subsection (1) until the record is expunged under Subsection (3).

(3) (a) A local authority and the Highway Safety Office shall expunge from the records maintained an administrative penalty imposed under Section 32B-7-303 for purposes of determining future administrative penalties under Section 32B-7-303 if the individual has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the individual is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(b) A local authority shall expunge from the records maintained by the local authority an administrative penalty imposed under Section 32B-7-303 against an off-premise beer retailer for purposes of determining future administrative penalties under Section 32B-7-303 if the off-premise beer retailer or any staff of that off-premise beer retailer has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the off-premise beer retailer or staff of the off-premise beer retailer is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(4) The Highway Safety Office shall administer a program to reimburse a

municipal or county law enforcement agency:

(a) for the actual costs of an alcohol-related compliance check investigation conducted pursuant to Section 77-39-101 on the premises of an off-premise beer retailer;

(b) for administrative costs associated with reporting the compliance check investigation described in Subsection (4)(a);

(c) if the municipal or county law enforcement agency completes and submits to the Highway Safety Office a report within 90 days of the compliance check investigation described in Subsection (4)(a) in a format required by the Highway Safety Office; and

(d) in the order that the municipal or county law enforcement agency submits the report required by Subsection (4)(c) until the amount allocated by the Highway Safety Office to reimburse a municipal or county law enforcement agency is spent.

(5) The Highway Safety Office shall report to the Utah Substance Abuse Advisory Council by no later than October 1 following a fiscal year on the following funded during the prior fiscal year:

(a) compliance check investigations reimbursed under Subsection (4); and

(b) the collection, analysis, maintenance, tracking, and dissemination of violation history information described in Subsection (2).

Enacted by Chapter 276, 2010 General Session

Amended by Chapter 276, 2010 General Session, (Coordination Clause)

32B-8-101. Title.

This chapter is known as the "Resort License Act."

Enacted by Chapter 276, 2010 General Session

32B-8-102. Definitions.

As used in this chapter:

(1) "Boundary of a resort building" means the physical boundary of the land reasonably related to a resort building and any structure or improvement to that land as determined by the commission.

(2) "Dwelling" means a portion of a resort building:

(a) owned by one or more individuals;

(b) that is used or designated for use as a residence by one or more persons;
and

(c) that may be rented, loaned, leased, or hired out for a period of no longer than 30 consecutive days by a person who uses it for a residence.

(3) "Engaged in the management of the resort" may be defined by the commission by rule.

(4) "Invitee" means an individual who in accordance with Subsection 32B-8-304(12) is authorized to use a resort spa by a host who is:

(a) a resident; or

(b) a public customer.

(5) "Provisions applicable to a sublicense" means:

(a) for a full-service restaurant sublicense, Chapter 6, Part 2, Full-service

Restaurant License;

(b) for a limited-service restaurant sublicense, Chapter 6, Part 3, Limited-service Restaurant License;

(c) for a club sublicense, Chapter 6, Part 4, Club License;

(d) for an on-premise banquet sublicense, Chapter 6, Part 6, On-premise Banquet License;

(e) for an on-premise beer retailer sublicense, Chapter 6, Part 7, On-premise Beer Retailer License; and

(f) for a resort spa sublicense, Part 3, Resort Spa Sublicense.

(6) "Public customer" means an individual who holds a customer card in accordance with Subsection 32B-8-304(13).

(7) "Resident" means an individual who:

(a) owns a dwelling located within a resort building; or

(b) rents lodging accommodations for 30 consecutive days or less from:

(i) an owner of a dwelling described in Subsection (7)(a); or

(ii) the resort licensee.

(8) "Resort" means a location:

(a) on which is located one resort building; and

(b) that is affiliated with a ski area that physically touches the boundary of the resort building.

(9) "Resort building" means a building:

(a) that is primarily operated to provide dwellings or lodging accommodations;

(b) that has at least 150 units that consist of a dwelling or lodging accommodations;

(c) that consists of at least 400,000 square feet:

(i) including only the building itself; and

(ii) not including areas such as above ground surface parking; and

(d) of which at least 50% of the units described in Subsection (9)(b) consist of dwellings owned by a person other than the resort licensee.

(10) "Resort spa" means a spa, as defined by rule by the commission, that is within the boundary of a resort building.

(11) "Sublicense" means:

(a) a full-service restaurant sublicense;

(b) a limited-service restaurant sublicense;

(c) a club sublicense;

(d) an on-premise banquet sublicense;

(e) an on-premise beer retailer sublicense; and

(f) a resort spa sublicense.

(12) "Sublicense premises" means a building, enclosure, or room used pursuant to a sublicense in connection with the storage, sale, furnishing, or consumption of an alcoholic product, unless otherwise defined in this title or in the rules made by the commission.

Enacted by Chapter 276, 2010 General Session

32B-8-201. Commission's power to issue a resort license.

(1) Before a person as a resort may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on sublicense premises, the person shall first obtain a resort license from the commission in accordance with this part.

(2) (a) The commission may issue to a person a resort license to allow the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product in connection with a resort designated in the resort license if the person operates at least four sublicenses under the resort license.

(b) A resort license shall:

(i) consist of:

(A) a general resort license; and

(B) the four or more sublicenses; and

(ii) designate the boundary of the resort building.

(c) This chapter does not prohibit an alcoholic product on the boundary of the resort building to the extent otherwise permitted by this title.

(d) The commission may not issue a sublicense that is separate from a resort license.

(3) (a) The commission may not issue a total number of resort licenses that at any time totals more than four.

(b) Subject to Subsection (3)(c), when determining the total number of licenses the commission has issued for each type of retail license, the commission may not include a sublicense as one of the retail licenses issued under the provisions applicable to the sublicense.

(c) If a resort license issued under this chapter includes a sublicense that before the issuance of the resort license was a retail licensee under this chapter, the commission shall include the sublicense as one of the retail licenses issued under the provisions applicable to the sublicense in determining if the total number of licenses issued under the provisions applicable to the sublicense exceeds the number calculated by dividing the population of the state by the number specified in the provisions applicable to the sublicense.

Enacted by Chapter 276, 2010 General Session

32B-8-202. Specific licensing requirements for resort license.

(1) To obtain a resort license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:

(a) the current business license for each sublicense, if the business license is separate from the person's business license;

(b) evidence:

(i) of proximity of the resort building to any community location, with proximity requirements being governed by Section 32B-1-202;

(ii) that each of the four or more sublicense premises is entirely within the boundaries of the resort building; and

(iii) that the building designated in the application as the resort building qualifies as a resort building;

(c) a description and boundary map of the resort building;

(d) a description, floor plan, and boundary map of each sublicense premises

designating:

- (i) any location at which the person proposes that an alcoholic product be stored; and
- (ii) a designated location on the sublicense premises from which the person proposes that an alcoholic product be sold, furnished, or consumed;
- (e) evidence that the resort license person carries dramshop insurance coverage equal to the sum of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate to cover both the general resort license and each sublicense; and
- (f) a signed consent form stating that the person will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the boundary of the resort building and each sublicense premises.

(2) (a) A resort license expires on October 31 of each year.

(b) To renew a person's resort license, the person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for a resort license is \$300.

(b) The initial license fee for a resort license is calculated as follows:

- (i) \$10,000 if four sublicenses are being applied for under the resort license; or
- (ii) if more than four sublicenses are being applied for under the resort license, the sum of:

(A) \$10,000; and

(B) \$2,000 for each sublicense in excess of four sublicenses for which the person is applying.

(c) The renewal fee for a resort license is \$1,000 for each sublicense under the resort license.

(4) (a) The bond amount required for a resort license is the penal sum of \$25,000.

(b) A resort licensee is not required to have a separate bond for each sublicense, except that the aggregate of the bonds posted by the resort licensee shall cover each sublicense under the resort license.

(5) The commission may not issue a resort license for a resort building that does not meet the proximity requirements of Section 32B-1-202.

Amended by Chapter 334, 2011 General Session

32B-8-203. Specific qualifications for resort license.

(1) For purposes of this chapter, the commission shall apply:

(a) Subsection 32B-1-304(1)(a) to a partnership, corporation, or limited liability company, only if an individual listed in Subsection 32B-1-304(1)(b) will engage in the management of the resort; and

(b) Subsection 32B-1-304(1)(c) to an individual who is employed to act in a supervisory or managerial capacity for the resort licensee or in relation to a sublicense.

(2) The following are subject to Section 32B-8-501:

(a) an action of the commission under Subsection 32B-1-304(2);

(b) an action of the director under Subsection 32B-1-304(3); and

(c) termination of a resort license under Subsection 32B-1-304(6).

(3) (a) A person employed to act in a supervisory or managerial capacity for a sublicense is subject to the qualification requirements in the provisions applicable to the sublicense.

(b) If a person described under Subsection (3)(a) no longer possesses the qualifications required by this Subsection (3), the commission may suspend or revoke the sublicense that is part of the resort license.

Enacted by Chapter 276, 2010 General Session

32B-8-204. Commission and department duties before issuing resort license.

(1) Before the issuance of a resort license, the department shall comply with the requirements of Subsection 32B-5-203(1) in relation to the resort license and each sublicense.

(2) Before issuing a resort license, in addition to considering the factors described in Section 32B-8-202, the commission shall:

(a) consider the resort license person's ability to manage and operate a resort license and the ability of any individual who will act in a supervisory or managerial capacity for a sublicense, including:

- (i) past management experience;
- (ii) past alcoholic product license experience; and
- (iii) the type of management scheme to be used by the resort license person;

(b) consider the nature or type of:

- (i) the person's business operation of the resort license; and
- (ii) the business operation of each sublicense; and

(c) subject to Subsection (3), determine that each sublicense meets the requirements imposed under the provisions applicable to each sublicense.

(3) (a) Subject to Subsection (3)(b), notwithstanding the requirements to obtain a retail license under the provisions applicable to a sublicense, a sublicense of a resort license is not subject to:

(i) a requirement to submit an application or renewal application that is separate from the resort license application;

(ii) a requirement to carry public liability insurance or dramshop insurance coverage that is separate from that carried by the resort licensee; or

(iii) a requirement to post a bond that is separate from the bond posted by the resort licensee.

(b) If a resort licensee seeks to add a sublicense after its resort license is issued, the resort licensee shall file with the department:

(i) a nonrefundable \$300 application fee;

(ii) an initial license fee of \$2,250, which is refundable if the sublicense is not issued;

(iii) written consent of the local authority;

(iv) a copy of:

(A) the resort licensee's current business license; and

(B) the current business license for the sublicense, if the business licensee is

separate from the resort licensee's business license;

(v) evidence that the sublicense premises is entirely within the boundary of the resort building;

(vi) a description, floor plan, and boundary map of the sublicense premises designating:

(A) any location at which the person proposes that an alcoholic product be stored; and

(B) any designated location on the sublicense premises from which the person proposes that an alcoholic product be sold, furnished, or consumed;

(vii) evidence that the person carries public liability insurance in an amount and form satisfactory to the department;

(viii) evidence that the person carries dramshop insurance coverage in the amount required by Section 32B-8-202 that covers the sublicense to be added;

(ix) a signed consent form stating that the resort licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the sublicense premises;

(x) if the resort licensee is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and

(xi) any other information the commission or department may require.

Amended by Chapter 334, 2011 General Session

32B-8-301. Commission's power to issue resort spa sublicense.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a resort spa sublicensee, a resort licensee or a person applying for a resort license shall first obtain a resort spa sublicense from the commission in accordance with this part.

(2) The commission may issue a resort spa sublicense to establish a resort spa license within the boundary of a resort building for the storage, sale, offer for sale, furnishing, and consumption of liquor on premises operated as a resort spa.

(3) The resort spa sublicense premises shall fall entirely within the boundary of a resort building.

Enacted by Chapter 276, 2010 General Session

32B-8-302. Specific licensing requirements for resort spa sublicense.

(1) A person may not file a written application with the department to obtain a resort spa sublicense that is separate from the application of the resort license, unless the resort spa sublicense is being sought after the issuing of a resort license.

(2) If a resort licensee seeks to add a resort spa sublicense after its resort license is issued, the resort licensee shall comply with Subsection 32B-8-204(3)(b).

(3) (a) A resort spa sublicense expires on October 31 of each year.

(b) A resort licensee desiring to renew the resort licensee's resort spa sublicense shall renew the resort spa sublicense as part of renewing the resort license.

(c) Failure to meet the renewal requirements for a resort license results in an automatic forfeiture of the resort spa sublicense effective on the date the resort license

expires.

Enacted by Chapter 276, 2010 General Session

32B-8-303. Specific qualifications for resort spa sublicense.

(1) A person employed to act in a supervisory or managerial capacity for the resort spa sublicense is subject to qualification requirements of Section 32B-8-203.

(2) If a person no longer possesses the qualifications required by Section 32B-8-203 for obtaining the resort license or resort spa sublicense, the commission may suspend or revoke the resort spa sublicense that is part of the resort license.

Enacted by Chapter 276, 2010 General Session

32B-8-304. Specific operational requirements for resort spa sublicense.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a resort spa sublicense shall comply with this section.

(b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a retail licensee;
- (ii) staff of the retail licensee;
- (iii) a person otherwise related to a resort spa sublicense; or
- (iv) any combination of the persons listed in this Subsection (1)(b).

(2) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a record required by this title is maintained, and a record is maintained or used for the resort spa sublicense:

- (i) as the department requires; and
- (ii) for a minimum period of three years.

(b) A record is subject to inspection by an authorized representative of the commission and the department.

(c) A resort licensee shall allow the department, through an auditor or examiner of the department, to audit the records for a resort spa sublicense at the times the department considers advisable.

(d) The department shall audit the records for a resort spa sublicense at least once annually.

(e) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (2).

(3) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or furnish liquor at a resort spa during a period that:

- (i) begins at 1 a.m.; and
- (ii) ends at 9:59 a.m.

(b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(c) (i) Notwithstanding Subsections (3)(a) and (b), a resort spa shall remain open

for one hour after the resort spa ceases the sale and furnishing of an alcoholic product during which time a person at the resort spa may finish consuming:

- (A) a single drink containing spirituous liquor;
- (B) a single serving of wine not exceeding five ounces;
- (C) a single serving of heavy beer;
- (D) a single serving of beer not exceeding 26 ounces; or
- (E) a single serving of a flavored malt beverage.

(ii) A resort spa is not required to remain open:

- (A) after all persons have vacated the resort spa sublicense premises; or
- (B) during an emergency.

(4) A minor may not be admitted into, use, or be on:

(a) the sublicense premises of a resort spa unless accompanied by a person 21 years of age or older; or

(b) a lounge or bar area of the resort spa sublicense premises.

(5) A resort spa shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the resort spa sublicense premises.

(6) (a) Subject to the other provisions of this Subsection (6), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A resort spa patron may not have two spirituous liquor drinks before the resort spa patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under this Subsection (6).

(7) (a) An alcoholic product may only be consumed at a table or counter.

(b) An alcoholic product may not be served to or consumed by a patron at a bar.

(8) (a) A person operating under a resort spa sublicense shall have available on the resort spa sublicense premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold or furnished by the resort spa including:

- (i) a set-up charge;
- (ii) a service charge; or
- (iii) a chilling fee.

(b) A charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic product menus including:

- (i) a set-up charge;
- (ii) a service charge; or
- (iii) a chilling fee.

(9) (a) A resort licensee shall own or lease premises suitable for the resort spa's activities.

(b) A resort licensee may not maintain premises in a manner that barricades or conceals the resort spa sublicense's operation.

(10) Subject to the other provisions of this section, a person operating under a resort spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use the resort spa sublicense premises other than:

- (a) a resident;
- (b) a public customer who holds a valid customer card issued under Subsection

(12); or

(c) an invitee.

(11) A person operating under a resort spa sublicense may allow an individual to be admitted to or use the resort spa sublicense premises as an invitee subject to the following conditions:

(a) the individual shall be previously authorized by one of the following who agrees to host the individual as an invitee into the resort spa:

(i) a resident; or

(ii) a public customer as described in Subsection (10);

(b) the individual has only those privileges derived from the individual's host for the duration of the invitee's visit to the resort spa; and

(c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter into an agreement or arrangement with a resident or public customer to indiscriminately host a member of the general public into the resort spa as an invitee.

(12) A person operating under a resort spa sublicense may issue a customer card to allow an individual to enter and use the resort spa sublicense premises on a temporary basis under the following conditions:

(a) the resort spa may not issue a customer card for a time period that exceeds three weeks;

(b) the resort spa shall assess a fee to a public customer for a customer card;

(c) the resort spa may not issue a customer card to a minor; and

(d) a public customer may not host more than seven invitees at one time.

Amended by Chapter 297, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-8-401. Specific operational requirements for resort license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a resort licensee, staff of the resort licensee, and a person otherwise operating under a sublicense shall comply with this section.

(b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a resort licensee;

(ii) individual staff of a resort licensee;

(iii) a person otherwise operating under a sublicense;

(iv) individual staff of a person otherwise operating under a sublicense; or

(v) any combination of the persons listed in this Subsection (1)(b).

(2) (a) A resort licensee may not sell, offer for sale, or furnish an alcoholic product except:

(i) on a sublicense premises;

(ii) pursuant to a permit issued under this title; or

(iii) under a package agency agreement with the department, subject to Chapter 2, Part 6, Package Agency.

(b) A resort licensee who sells, offers for sale, or furnishes an alcoholic product as provided in Subsection (2)(a), shall sell, offer for sale, or furnish the alcoholic

product:

(i) if on a sublicense premises, in accordance with the operational requirements under the provisions applicable to the sublicense, except as provided in Section 32B-8-402;

(ii) if under a permit issued under this title, in accordance with the operational requirements under the provisions applicable to the permit; and

(iii) if as a package agency, in accordance with the contract with the department and Chapter 2, Part 6, Package Agency.

(3) A resort licensee shall comply with Subsections 32B-5-301(4) and (5) within the boundary of the resort building.

(4) A resort licensee shall operate in a manner so that at least 70% of the annual aggregate of the gross receipts related to the sale of food or beverages for the resort license and each of its sublicenses is from the sale of food, not including:

(a) mix for an alcoholic product; and

(b) a charge in connection with the service of an alcoholic product.

(5) (a) A resort licensee shall supervise and direct a person involved in the sale, offer for sale, or furnishing of an alcoholic product under a resort license.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product under a resort license shall complete the alcohol training and education seminar.

(6) (a) Room service of an alcoholic product to a lodging accommodation of a resort licensee shall be provided in person by staff of a resort licensee only to an adult occupant in the lodging accommodation.

(b) An alcoholic product may not be left outside a lodging accommodation for retrieval by an occupant.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-8-402. Specific operational requirements for a sublicense.

(1) A person operating under a sublicense is subject to the operational requirements under the provisions applicable to the sublicense except that:

(a) notwithstanding a requirement in the provisions applicable to the sublicense, a person operating under the sublicense is not subject to a requirement that a certain percentage of the gross receipts for the sublicense be from the sale of food, except to the extent that the gross receipts for the sublicense are included in calculating the percentages under Subsection 32B-8-401(4); and

(b) notwithstanding Section 32B-6-202 or 32B-6-302, a bar structure in a licensed premises operated under a full-service restaurant sublicense or limited-service restaurant sublicense is considered a grandfathered bar structure if the resort license that includes the full-service restaurant sublicense or limited-service restaurant sublicense is issued by no later than December 31, 2010.

(2) Subject to Section 32B-8-502, for purposes of interpreting an operational requirement imposed by the provisions applicable to a sublicense:

(a) a requirement imposed on a person operating under a sublicense applies to the resort licensee; and

(b) a requirement imposed on staff of a person operating under a sublicense applies to staff of the resort licensee.

Amended by Chapter 334, 2011 General Session

32B-8-501. Enforcement of qualifications for resort license or sublicense.

(1) The commission or department may not take an action described in Subsection (2) with regard to a resort license unless the person who is found not to meet the qualifications of Section 32B-8-203 is one of the following who is engaged in the management of the resort:

- (a) a partner;
- (b) a managing agent;
- (c) a manager;
- (d) an officer;
- (e) a director;
- (f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation;
- (g) a member who owns at least 20% of the limited liability company; or
- (h) a person employed to act in a supervisory or managerial capacity for the resort licensee.

(2) Subsection (1) applies to:

(a) the commission immediately suspending or revoking a resort license, if after the day on which the resort license is issued, a person described in Subsection 32B-8-203(1):

(i) is found to have been convicted of an offense described in Subsection 32B-1-304(1)(a) before the resort license is issued; or

(ii) on or after the day on which the resort license is issued:

(A) is convicted of an offense described in Subsection 32B-1-304(1)(a)(i), (ii), or (iii); or

(B) (I) is convicted of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug; and

(II) was convicted of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A);

(b) the director taking an emergency action by immediately suspending the operation of a resort license in accordance with Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection 32B-8-203(1):

(i) is arrested on a charge for an offense described in Subsection 32B-1-304(1)(a)(i), (ii), or (iii); or

(ii) (A) is arrested on a charge for the offense of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug; and

(B) was convicted of driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug within five years before the day on which the person is arrested on a charge described in Subsection (2)(b)(ii)(A); and

(c) the commission suspending or revoking a resort license because a person to

whom a resort license is issued under this chapter no longer possesses the qualifications required by this title for obtaining the resort license.

(3) This section does not prevent the commission from suspending or revoking a sublicense that is part of a resort license if a person employed to act in a supervisory or managerial capacity for a sublicense no longer meets the qualification requirements in the provisions applicable to the sublicense.

Enacted by Chapter 276, 2010 General Session

32B-8-502. Enforcement of operational requirements for resort license or sublicense.

(1) (a) Except as provided in Subsection (2) and in addition to Subsection (3), failure by a person described in Subsection (1)(b) to comply with this chapter or an operational requirement under a provision applicable to a sublicense may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a resort licensee;
- (ii) individual staff of a resort licensee;
- (iii) a person otherwise operating under a sublicense;
- (iv) individual staff of a person otherwise operating under a sublicense; or
- (v) any combination of the persons listed in this Subsection (1)(a).

(b) This Subsection (1) applies to:

- (i) a resort licensee;
- (ii) a person operating under a sublicense; or
- (iii) staff of a resort licensee or other person operating under a sublicense.

(2) (a) Notwithstanding the other provisions of this title, if the failure to comply with this chapter described in Subsection (1) relates to a sale, offer for sale, or furnishing of an alcoholic product on a sublicense premises, a resort licensee or an individual member of the resort licensee's management personnel is subject to a sanction described in Subsection (1), only if the commission finds that:

(i) during the three years before the day on which the commission makes the finding, there are three or more disciplinary proceedings against any person operating under a sublicense of the resort licensee for failure to comply with an operational requirement applicable to the sublicense; and

(ii) the resort licensee has not taken reasonable steps to prevent persons operating under a sublicense of the resort licensee from failing to comply with operational requirements applicable to the sublicense.

(b) This Subsection (2) applies if the three or more disciplinary proceedings described in Subsection (2)(a) are against:

- (i) the same person operating under a sublicense of the resort licensee; or
- (ii) two or more different persons operating under a sublicense of the resort licensee.

(3) An operational requirement applicable to a person operating under a sublicense is enforced as provided by the provisions applicable to the sublicense.

Enacted by Chapter 276, 2010 General Session

32B-8-503. Enforcement of Nuisance Retail Licensee Act.

Chapter 3, Part 3, Nuisance Retail Licensee Act, applies to a resort license only if three or more of the sublicenses of the resort license have not been renewed in accordance with Chapter 3, Part 3, Nuisance Retail Licensee Act, within three years from the day on which a resort licensee applies for the renewal of its resort license.

Enacted by Chapter 276, 2010 General Session

32B-9-101. Title.

This chapter is known as the "Event Permit Act."

Enacted by Chapter 276, 2010 General Session

32B-9-102. Definitions.

As used in this chapter:

(1) "Single event permit" means an event permit issued in accordance with Part 3, Single Event Permit.

(2) "Temporary beer event permit" means an event permit issued in accordance with Part 4, Temporary Beer Event Permit.

Enacted by Chapter 276, 2010 General Session

32B-9-201. Application requirements for event permit.

- (1) To obtain an event permit, a person shall submit to the department:
- (a) a written application in a form that the department prescribes;
 - (b) an event permit fee:
 - (i) in the amount specified in the relevant part under this chapter for the type of event permit for which the person is applying; and
 - (ii) that is refundable if an event permit is not issued;
 - (c) written consent of the local authority;
 - (d) a bond as specified by Section 32B-9-203;
 - (e) the times, dates, location, estimated attendance, nature, and purpose of the event;
 - (f) a description or floor plan designating:
 - (i) the area in which the person proposes that an alcoholic product be stored;
 - (ii) the site from which the person proposes that an alcoholic product be sold, offered for sale, or furnished; and
 - (iii) the area in which the person proposes that an alcoholic product be allowed to be consumed;
 - (g) a signed consent form stating that the event permittee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises during the event;
 - (h) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
 - (i) any other information as the commission or department may require.
- (2) An entity applying for a permit need not meet the requirements of

Subsections (1)(b), (c), and (d) if the entity is:

- (a) a state agency; or
- (b) a political subdivision of the state.

(3) The director may not issue an event permit to a person who is disqualified under Section 32B-1-304.

(4) (a) The proximity requirements of Section 32B-1-202 do not apply to an event permit.

(b) Notwithstanding Subsection (4)(a), nothing in this section prevents the director, the Compliance, Licensing, and Enforcement Subcommittee, or the commission from considering the proximity of an educational, religious, or recreational facility, or any other relevant factor in deciding whether to issue an event permit.

Amended by Chapter 365, 2012 General Session

32B-9-202. Duties before issuing event permit.

(1) (a) Before the director may issue an event permit, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the director as to whether the director should issue an event permit.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the director and the Compliance, Licensing, and Enforcement Subcommittee to aid in the determination.

(2) Before issuing an event permit, the director shall:

(a) determine that the person filed a complete application and is in compliance with:

- (i) Section 32B-9-201; and
- (ii) the relevant part under this chapter for the type of event permit for which the person is applying;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the purpose of the organization or its local lodge, chapter, or other local unit;

(d) consider the times, dates, location, estimated attendance, nature, and purpose of the event;

(e) to minimize the risk of minors being sold or furnished alcohol or adults being overserved alcohol at the event, assess the adequacy of control measures for:

- (i) a large-scale public event when the estimated attendance is in excess of 1,000 people; or

- (ii) an outdoor public event;

(f) obtain the approval of the Compliance, Licensing, and Enforcement Subcommittee before issuing an event permit;

(g) notify each commissioner at least three business days before the director issues the event permit in accordance with Subsection (3); and

(h) consider any other factor the director considers necessary.

(3) (a) The director shall inform each commissioner of the director's preliminary decision to issue or deny the issuance of an event permit three business days before the decision is to be final.

- (b) The preliminary decision becomes a final decision of the director:
 - (i) unless within three business days of receipt of the notice at least three of the commissioners request a meeting to discuss whether the event permit should be issued; or
 - (ii) the director modifies or revokes the preliminary decision to issue or deny issuance of the event permit.
- (c) If three or more of the commissioners request a meeting, the applicant for the event permit shall be notified and the commission:
 - (i) shall hold a meeting on the application for an event permit no later than the next regularly scheduled meeting of the commission; and
 - (ii) may issue or deny issuance of the event permit if the applicant meets the requirements of this chapter.
- (d) Notwithstanding the other provisions of this Subsection (3), the director may at any time refer an application for an event permit directly to the commission for a determination as to whether an event permit should be issued or denied.
- (e) For purposes of this title, an event permit issued by the commission is to be treated the same as an event permit issued by the director.
- (f) If the commission finds that an event permit was improperly issued or that the permittee has violated this chapter, the commission may take any action permitted under this title.
- (4) Once the director issues an event permit, the department shall send a copy of the approved application and the event permit by written or electronic means to the state and local law enforcement authorities at least three days before the event.
- (5) The director shall provide the commission a monthly report of the actions taken by the director under this part.
- (6) If authorized by the director, the deputy director may act on behalf of the director for purposes of issuing an event permit under this chapter.

Amended by Chapter 365, 2012 General Session

32B-9-203. Bond for event permit.

- (1) (a) A person applying for an event permit shall post a cash bond or surety bond:
 - (i) in the amount specified in the relevant part under this chapter for the type of event permit for which the person is applying; and
 - (ii) payable to the department.
- (b) An event permittee shall procure and maintain a bond required under this section for as long as the event permit is in effect.
- (2) A bond posted by an event permittee under this section shall be:
 - (a) in a form approved by the attorney general; and
 - (b) conditioned upon the event permittee's faithful compliance with this title and the rules of the commission.
- (3) No part of a bond posted by an event permittee under this section may be withdrawn during the period the event permit is in effect.
- (4) (a) A bond posted by an event permittee under this section may be forfeited if the event permit is revoked.

(b) Notwithstanding Subsection (4)(a), the department may make a claim against a bond posted by an event permittee for money owed the department under this title without the commission first revoking the event permit.

Enacted by Chapter 276, 2010 General Session

32B-9-204. General operational requirements for an event permit.

(1) (a) An event permittee and a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at an event for which an event permit is issued, shall comply with this title and rules of the commission.

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(I) an event permittee;

(II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event; or

(III) any combination of the persons listed in this Subsection (1)(b);

(B) immediate revocation of the event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of an alcoholic product present at the event; and

(ii) if the event permit is revoked, disqualifies the event permittee from applying for an event permit for a period of three years from the date of revocation of the event permit.

(c) An alcoholic product seized under this Subsection (1) shall be returned to the event permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

(2) (a) If there is a conflict between this part and the relevant part under this chapter for the specific type of special use permit held by the special use permittee, the relevant part governs.

(b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the relevant part under this chapter for the type of event permit that is held by the event permittee.

(c) Notwithstanding that this part or the relevant part under this chapter for the type of event permit held by an event permittee refers to "event permittee," a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the event permit is issued is subject to the same requirement or prohibition.

(3) An event permittee shall display a copy of the event permit in a prominent place in the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.

(4) An event permittee may not on the premises of the event:

(a) engage in or allow any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;

(b) have any video gaming device, as defined and proscribed by Title 76,

Chapter 10, Part 11, Gambling; or

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(5) An event permittee may not knowingly allow a person at an event to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

(a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or

(b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.

(6) An event permittee may not sell, offer for sale, or furnish beer except beer purchases from:

(a) a beer wholesaler licensee;

(b) a beer retailer; or

(c) a small brewer.

(7) An event permittee may not store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product purchased for an event in a location other than that described in the application and designated on the event permit unless the event permittee first applies for and receives approval from the director, with the approval of the Compliance, Licensing, and Enforcement Subcommittee, for a change of location.

(8) (a) Subject to Subsection (8)(b), an event permittee may sell, offer for sale, or furnish beer for on-premise consumption:

(i) in an open original container; and

(ii) in a container on draft.

(b) An event permittee may not sell, offer for sale, or furnish beer sold pursuant to Subsection (8)(a):

(i) in a size of container that exceeds two liters; or

(ii) to an individual patron in a size of container that exceeds one liter.

(9) (a) An event permittee may not sell or offer for sale an alcoholic product at less than the cost of the alcoholic product to the event permittee.

(b) An event permittee may not sell an alcoholic product at a discount price on any date or at any time.

(c) An event permittee may not sell or offer for sale an alcoholic product at a price that encourages over consumption or intoxication.

(d) An event permittee may not sell or offer for sale an alcoholic product at a special or reduced price for only certain hours of the day of an event.

(e) An event permittee may not sell, offer for sale, or furnish more than one alcoholic product at the price of a single alcoholic product.

(f) An event permittee, or a person operating, selling, offering, or furnishing an alcoholic product under an event permit, may not sell, offer for sale, or furnish an indefinite or unlimited number of alcoholic products during a set period for a fixed price, unless:

(i) the alcoholic product is served to a patron at a seated event;

(ii) food is available whenever the alcoholic product is sold, offered for sale, or furnished; and

(iii) no person advertises that at the event a person may be sold or furnished an indefinite or unlimited number of alcoholic products during a set period for a fixed price.

(g) An event permittee may not engage in a public promotion involving or offering a free alcoholic product to the general public.

(10) An event permittee may not sell, offer for sale, or furnish an alcoholic product to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(11) (a) An alcoholic product is considered under the control of the event permittee during an event.

(b) A patron at an event may not bring an alcoholic product onto the premises of the event.

(12) An event permittee may not permit a patron to carry from the premises an open container that:

(a) is used primarily for drinking purposes; and

(b) contains an alcoholic product.

(13) (a) A person involved in the storage, sale, or furnishing of an alcoholic product at an event is considered under the supervision and direction of the event permittee.

(b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product at an event may not, while on duty:

(i) consume an alcoholic product; or

(ii) be intoxicated.

(14) A minor may not handle, sell, offer for sale, or furnish an alcoholic product at an event.

(15) The location specified in an event permit may not be changed without prior written approval of the commission.

(16) An event permittee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the event permit to another person whether for monetary gain or not.

(17) (a) An event permittee may not sell, offer for sale, furnish, or allow the consumption of an alcoholic product during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) This Subsection (17) does not preclude a local authority from being more restrictive with respect to the hours of sale, offer for sale, furnishing, or consumption of an alcoholic product at an event.

(18) A patron may have no more than one alcoholic product of any kind at a time before the patron.

(19) (a) An event permittee shall display, in a prominent place, a sign in large letters that consists of text in the following order:

(i) a header that reads: "WARNING";

- (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
 - (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";
 - (iv) a header that reads: "WARNING"; and
 - (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (b) (i) The text described in Subsections (19)(a)(i) through (iii) shall be in a different font style than the text described in Subsections (19)(a)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (19)(a) shall be in the same font size.
- (c) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.

Amended by Chapter 365, 2012 General Session

32B-9-301. Title.

This part is known as "Single Event Permit."

Enacted by Chapter 276, 2010 General Session

32B-9-302. Definitions.

As used in this part:

- (1) "120 hour single event permit" means a single event permit that authorizes under this part the storage, sale, offering for sale, furnishing, and consumption of liquor for a period not to exceed 120 consecutive hours.
- (2) "72 hour single event permit" means a single event permit that authorizes under this part the storage, sale, offering for sale, furnishing, and consumption of liquor for a period not to exceed 72 consecutive hours.
- (3) "Single event permit" means:
 - (a) a 120 hour single event permit; and
 - (b) a 72 hour single event permit.

Amended by Chapter 307, 2011 General Session

32B-9-303. Director's power to issue single event permit.

- (1) Before a person may sell, offer for sale, or furnish liquor at retail for on-premise consumption at an event, the person shall first obtain a single event permit from the director in accordance with this part.
- (2) (a) Subject to Subsection (5), the director may issue a single event permit to any of the following that is conducting a convention, civic, or community enterprise, a bona fide:
 - (i) partnership;
 - (ii) corporation;
 - (iii) limited liability company;
 - (iv) religious organization;

- (v) political organization;
 - (vi) incorporated association;
 - (vii) recognized subordinate lodge, chapter, or other local unit of an entity described in this Subsection (2)(a);
 - (viii) state agency; or
 - (ix) political subdivision of the state.
- (b) The director may not issue a single event permit to an entity that has not been in existence as a bona fide entity for at least one year before the day on which the entity applies for a single event permit.
- (3) (a) A single event permit may authorize:
- (i) the storage, sale, offering for sale, furnishing, and consumption of liquor at an event at which the storage, sale, offering for sale, furnishing, or consumption of liquor is otherwise prohibited by this title under either:
 - (A) a 120 hour single event permit; or
 - (B) a 72 hour single event permit; and
 - (ii) the storage, sale, offer for sale, furnishing, and consumption of beer at the same event for the period that the storage, sale, offer for sale, furnishing, or consumption of liquor is authorized under Subsection (3)(a)(i) for the single event permit.
- (b) The single event permit shall state in writing whether it is:
- (i) a 120 hour single event permit; or
 - (ii) a 72 hour single event permit.
- (4) The director may not issue more than:
- (a) four single event permits in any one calendar year to the same person listed in Subsection (2) if one or more of the single event permits is a 120 hour single event permit; or
 - (b) 12 single event permits in any one calendar year to the same person listed in Subsection (2) if each of the single event permits issued to that person is a 72 hour single event permit.
- (5) Before the director issues or denies the issuance of a single event permit under this section, the director shall comply with Section 32B-9-202.

Amended by Chapter 365, 2012 General Session

32B-9-304. Specific permitting requirements for single event permit.

- (1) To obtain a single event permit, in addition to complying with Part 2, Event Permitting General Provisions, an entity described in Subsection 32B-9-303(2)(a) shall state in its written application:
- (a) the purpose of the entity described in Subsection 32B-9-303(2)(a);
 - (b) the time period under Subsection 32B-9-303(3)(a)(i)(A) or (B) for which the entity is applying; and
 - (c) if submitting the first request for a single event permit in a calendar year, whether it is requesting to be under Subsection 32B-9-303(4)(a) or (b).
- (2) The application fee for a single event permit is \$125.
- (3) The bond amount required for a single event permit is the penal sum of \$1,000.

Amended by Chapter 334, 2011 General Session

32B-9-305. Specific operational requirements for single event permit.

(1) (a) In addition to complying with Section 32B-9-204, a single event permittee or a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(I) a single event permittee;

(II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic product at the event; or

(III) any combination of persons listed in this Subsection (1)(b);

(B) immediate revocation of the single event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of an alcoholic product present at the event; and

(ii) if the single event permit is revoked, disqualifies the single event permittee from applying for a single event permit or temporary beer event permit for a period of three years from the date of revocation of the single event permit.

(c) An alcoholic product seized under this Subsection (1) shall be returned to the single event permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

(2) (a) A single event permittee shall make and maintain an expense and revenue ledger or record showing:

(i) expenditures made for:

(A) liquor;

(B) beer;

(C) set-ups; and

(D) an ingredient or component of an alcoholic product other than a set-up; and

(ii) the revenue from the sale of an alcoholic product.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) A single event permittee shall purchase liquor stored, sold, offered for sale, furnished, or consumed at an event from a state store or package agency.

(4) (a) A single event permittee may not sell, offer for sale, or furnish a primary spirituous liquor in a quantity that exceeds 1.5 ounces per beverage, except that additional spirituous liquor may be used in a beverage if:

(i) used as a secondary flavoring ingredient;

(ii) used in conjunction with the primary spirituous liquor;

(iii) the secondary ingredient is not the only spirituous liquor in the beverage;

and

(iv) subject to Subsection 32B-9-204(18):

(A) a patron has no more than 2.5 ounces of spirituous liquor at a time before the patron; and

(B) a patron has no more than one spirituous liquor drink at a time before the patron.

(b) Spirituous liquor need not be dispensed through a calibrated metered dispensing system.

(5) (a) A single event permittee may sell, offer for sale, or furnish wine by the glass or an individual portion, except that a glass or individual portion may not exceed five ounces.

(b) A single event permittee may furnish an individual portion served to a patron in more than one glass if the total amount of wine does not exceed five ounces.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection 32B-9-204(18).

(d) A single event permittee may sell, offer for sale, or furnish wine in a container not exceeding 1.5 liters at a price fixed by the commission.

(6) A single event permittee may sell, offer for sale, or furnish heavy beer in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(7) A single event permittee may sell, offer for sale, or furnish a flavored malt beverage in an original container at a price fixed by the commission, except that the original container may not exceed one liter.

(8) A single event permittee may sell liquor only at a price fixed by the commission.

(9) A single event permittee may perform a service and assess a service charge as authorized by commission rule for liquor purchased at an event.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-9-401. Title.

This part is known as "Temporary Beer Event Permit."

Enacted by Chapter 276, 2010 General Session

32B-9-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-9-403. Director's power to issue temporary beer event permit.

(1) Before a person may sell, offer for sale, or furnish beer at retail for on-premise consumption at an event, the person shall obtain in accordance with this part:

(a) a single event permit; or

(b) (i) a temporary beer event permit; and

(ii) (A) a beer permit issued by the local authority as provided in Section 32B-9-404; or

(B) written consent of the local authority to sell beer at retail for on-premise

consumption at the event.

(2) (a) Subject to Subsection (4), the director may issue a temporary beer event permit to allow the sale, offering for sale, or furnishing of beer for on-premise consumption only at an event that does not last longer than 30 days.

(b) A temporary beer event permit authorizes, for a period not to exceed 30 days, the storage, sale, offer for sale, furnishing, and consumption of beer at an event.

(c) If a person obtains a temporary beer event permit for an event that lasts no longer than 30 days, an on-premise beer retailer license is not required for the sale of beer at the event.

(3) (a) The director may not issue a temporary beer event permit to a person if the aggregate of the days that the person is authorized to store, sell, offer for sale, or furnish an alcoholic product under a temporary beer event permit will exceed a total of 90 days in any one calendar year.

(b) The director may not issue, and a person may not obtain, a temporary beer event permit to avoid or attempt to avoid the requirement to be licensed under Chapter 6, Part 7, On-premise Beer Retailer License.

(4) Before the director issues or denies the issuance of a temporary beer event permit under this section, the director shall comply with Section 32B-9-202.

Amended by Chapter 365, 2012 General Session

32B-9-404. Local authority's power to issue temporary beer event permit.

(1) A local authority may issue, suspend, and revoke a temporary permit to sell, offer for sale, or furnish beer for on-premise consumption at an event, except that the local authority may not issue a temporary permit if the event lasts longer than 30 days.

(2) Suspension or revocation of a temporary beer event permit issued under Section 32B-9-403 or a temporary permit issued by a local authority under this section prohibits the temporary beer event permittee who has a permit suspended or revoked by either the commission or local authority from continuing to operate under the other state or local permit.

Amended by Chapter 365, 2012 General Session

32B-9-405. Specific permitting requirements for temporary beer event permit issued by commission.

(1) To obtain a temporary beer event permit, in addition to complying with Part 2, Event Permitting General Provisions, a person shall state in the person's written application the purpose of the event for which the person seeks a temporary beer event permit.

(2) The application fee for a beer permit is \$100.

(3) The bond amount required for a beer permit is the penal sum of \$500.

Amended by Chapter 334, 2011 General Session

32B-9-406. Specific operational requirements for temporary beer event permit.

(1) (a) In addition to complying with the requirements of Section 32B-9-204, a temporary beer event permittee or a person involved in the storage, sale, offer for sale, or furnishing of beer at the event shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a):

(i) may result in:

(A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(I) a temporary beer event permittee;

(II) a person involved in the storage, sale, offer for sale, or furnishing of beer at the event; or

(III) any combination of persons listed in this Subsection (1)(b);

(B) immediate revocation of the temporary beer event permit;

(C) forfeiture of a bond; or

(D) immediate seizure of beer present at the event; and

(ii) if the temporary beer event permit is revoked, disqualifies the temporary beer event permittee from applying for a temporary beer event permit or single event permit for a period of three years from the date of revocation of the temporary beer event permit.

(c) Beer seized under this Subsection (1) shall be returned to the event permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

(2) A temporary beer event permittee may not sell, offer for sale, or furnish an alcoholic product other than beer pursuant to a temporary beer event permit.

(3) (a) A temporary beer event permittee shall make and maintain an expense and revenue ledger or record showing:

(i) expenditures made for beer; and

(ii) the revenue from sale of beer.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (3).

Enacted by Chapter 276, 2010 General Session

32B-10-101. Title.

This chapter is known as the "Special Use Permit Act."

Enacted by Chapter 276, 2010 General Session

32B-10-102. Definitions.

As used in this chapter, "special use permit" means a special use permit issued under this chapter, including:

(1) a religious wine use permit;

(2) an industrial or manufacturing use permit;

(3) a scientific or educational use permit; and

(4) a public service permit.

Enacted by Chapter 276, 2010 General Session

32B-10-201. Commission's power to issue special use permit.

(1) Before a person may purchase, use, store, sell, offer for sale, allow consumption, or manufacture an alcoholic product in a manner that requires a special use permit, the person shall first obtain a special use permit in accordance with this chapter.

(2) (a) The commission may issue a special use permit for the purchase, use, storage, sale, offer for sale, consumption, or manufacture of an alcoholic product for a limited purpose specified by this chapter and the rules of the commission.

(b) A special use permit authorizes the special use permittee to purchase, use, store, sell, offer for sale, consume, or manufacture an alcoholic product only in the quantity, in a type, and for a purpose stated in the special use permit.

Enacted by Chapter 276, 2010 General Session

32B-10-202. Application for special use permit -- Qualifications.

(1) To obtain a special use permit, a person shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable application fee, if required by the relevant part of this chapter applicable to the type of special use permit for which the person applies;

(c) an initial permit fee:

(i) if required by the relevant part of this chapter applicable to the type of special use permit for which the person applies; and

(ii) that is refundable if a special use permit is not issued;

(d) a one-time special use permit fee if required by a section of this chapter:

(i) applicable to the type of special use permit for which the person applies; and

(ii) that is refundable if a special use permit is not issued;

(e) a statement of the purpose for which the person applies for the special use permit;

(f) a description of the types of alcoholic product the person intends to use under authority of the special use permit;

(g) written consent of the local authority;

(h) if required, a bond as provided in Section 32B-10-205;

(i) a floor plan of the immediate area within the premises in which the person proposes that an alcoholic product will be used, mixed, stored, sold, or consumed if required by the relevant part of this chapter applicable to the type of special use permit for which the person applies;

(j) a signed consent form stating that the special use permittee will permit any authorized representative of the commission, department, or any other law enforcement officer to have unrestricted right to enter the special use permittee's premises;

(k) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and

(l) any other information the commission or department may require.

(2) (a) The commission may issue a special use permit only to a person who qualifies as follows:

(i) the commission may issue a religious wine use permit to a religious organization;

- (ii) the commission may issue an industrial or manufacturing use permit to a person engaged in an industrial or manufacturing pursuit;
 - (iii) the commission may issue a scientific or educational use permit to a person engaged in a scientific or educational pursuit; and
 - (iv) the commission may issue a public service permit to an operator of an airline, railroad, or other public conveyance.
- (b) The commission may not issue a special use permit to a person who is disqualified under Section 32B-1-304.
- (c) If a person to whom a special use permit is issued no longer possesses the qualifications required by this title for obtaining that special use permit, the commission may suspend or revoke that special use permit.

Enacted by Chapter 276, 2010 General Session

32B-10-203. Renewal of special use permit.

- (1) A special use permit expires on December 31 of each year unless otherwise provided on the special use permit.
- (2) To renew a renewable special use permit, a person shall submit a completed renewal application to the department:
- (a) no later than November 30; and
 - (b) in a form prescribed by the department.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of the special use permit, effective on the date the existing special use permit expires.

Enacted by Chapter 276, 2010 General Session

32B-10-204. Duties of commission and department before issuing special use permit.

- (1) (a) Before the commission issues a special use permit, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a special use permit should be issued.
- (b) The department shall forward the information it gathers and its recommendations to the commission to aid in the commission's determination.
- (2) Before issuing a special use permit, the commission shall:
- (a) determine that the person filed a complete application and is in compliance with:
 - (i) Section 32B-10-202; and
 - (ii) the relevant part under this chapter that applies to the special use permit for which the person is applying;
 - (b) determine that the person is not disqualified under Section 32B-1-304;
 - (c) consider the physical characteristics of the premises where an alcoholic product is proposed to be used, mixed, stored, sold, offered for sale, or furnished such as:
 - (i) the condition of the premises;
 - (ii) public visibility; and

- (iii) safety considerations;
- (d) consider the person's ability to properly use the special use permit within the requirements of this title and the commission rules including:
 - (i) the proposed use of the special use permit; and
 - (ii) the nature and type of person making use of the special use permit;
- (e) consider specific factors regarding the specific type of special use permit sought by the person;
- (f) approve of the location and equipment used by the person to distill alcohol for experimental testing purposes or use as a fuel; and
- (g) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-10-205. Bond for special use permit.

- (1) A special use permittee shall post a cash bond or surety bond only if the relevant part under this chapter for the type of special use permit requires posting of a bond.
- (2) (a) If a special use permittee is required to post a bond as provided in Subsection (1), the special use permittee shall procure and maintain the bond for as long as the special use permittee continues to operate under the special use permit.
 - (b) A bond required under this section shall be:
 - (i) in a form approved by the attorney general; and
 - (ii) conditioned upon the special use permittee's faithful compliance with this title and the rules of the commission.
- (3) If a surety bond posted by a special use permittee under this section is canceled due to a special use permittee's negligence, the department may assess a \$300 reinstatement fee.
- (4) No part of a bond posted by a special use permittee under this section may be withdrawn during the period that the special use permit is in effect.
- (5) (a) A bond posted by a special use permittee under this section may be forfeited if the special use permit is revoked.
 - (b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a special use permittee for money owed the department under this title without the commission first revoking the special use permit.

Enacted by Chapter 276, 2010 General Session

32B-10-206. General operational requirements for special use permit.

- (1) (a) A special use permittee and staff of the special use permittee shall comply with this title and rules of the commission, including the relevant part of the chapter that applies to the type of special use permit held by the special use permittee.
 - (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
 - (i) a special use permittee;
 - (ii) individual staff of a special use permittee; or
 - (iii) a special use permittee and staff of the special use permittee.

(c) The commission may suspend or revoke a special use permit with or without cause.

(2) (a) If there is a conflict between this part and the relevant part under this chapter for the specific type of special use permit, the relevant part under this chapter governs.

(b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," a special use permittee may only purchase, use, store, sell, offer for sale, allow consumption, or manufacture an alcoholic product authorized for the special use permit that is held by the special use permittee.

(c) Notwithstanding that this part or the relevant part under this chapter for the type of special use permit held by a special use permittee refers to "special use permittee," a person involved in the purchase, use, store, sell, offer for sale, allow consumption, or manufacture of an alcoholic product for which the special use permit is issued is subject to the same requirement or prohibition.

(3) (a) A special use permittee shall make and maintain a record, as required by commission rule, of any alcoholic product purchased, used, sold, or manufactured.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (3).

(4) (a) Except as otherwise provided in this title, a special use permittee may not purchase liquor except from a state store or package agency.

(b) A special use permittee may transport liquor purchased by the special use permittee in accordance with this Subsection (4) from the place of purchase to the special use permittee's premises.

(c) A special use permittee shall purchase liquor at prices set by the commission.

(d) When authorized by a special use permit, a special use permittee may purchase and receive an alcoholic product directly from a manufacturer for a purpose that is industrial, educational, scientific, or manufacturing.

(e) A health care facility may purchase and receive an alcoholic product directly from a manufacturer for use at the health care facility.

(5) A special use permittee may not use, mix, store, sell, offer for sale, furnish, manufacture, or allow consumption of an alcoholic product in a location other than as designated in a special use permittee's application.

(6) Except as otherwise provided, a special use permittee may not sell, offer for sale, or furnish an alcoholic product to:

(a) a minor;

(b) a person actually, apparently, or obviously intoxicated;

(c) a known interdicted person; or

(d) a known habitual drunkard.

(7) A special use permittee may not employ a minor to handle an alcoholic product.

(8) (a) The location specified in a special use permit may not be transferred from one location to another location, without prior written approval of the commission.

(b) A special use permittee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the permit to another person whether for monetary gain or not.

(9) A special use permittee may not purchase, use, mix, store, sell, offer for sale, furnish, consume, or manufacture an alcoholic product for a purpose other than that authorized by the special use permit.

(10) The commission may prescribe by policy or rule consistent with this title, the general operational requirements of a special use permittee relating to:

- (a) physical facilities;
- (b) conditions of purchase, use, storage, sale, consumption, or manufacture of an alcoholic product;
- (c) purchase, storage, and sales quantity limitations; and
- (d) other matters considered appropriate by the commission.

Enacted by Chapter 276, 2010 General Session

32B-10-207. Notifying department of change of ownership.

The commission may suspend or revoke a special use permit if a special use permittee does not immediately notify the department of a change in:

- (1) ownership of the permittee's business;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-10-301. Title.

This part is known as "Public Service Permit."

Enacted by Chapter 276, 2010 General Session

32B-10-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-10-303. Specific application and renewal requirements for public service permit.

(1) To obtain a public service permit, in addition to complying with Section 32B-10-202, a person shall submit to the department:

- (a) a statement of the total of regularly numbered flights, trains, buses, boats, or other types of public conveyance for which the person plans to use the special use permit;
- (b) a floor plan of any room or facility in which the person plans to establish a hospitality room where the sale, offer for sale, or furnishing of an alcoholic product is

made to a patron then in transit, using the host company's airline, railroad, bus, boat, or other public conveyance; and

(c) evidence of proximity of a proposed hospitality room to the arrival and departure area used by a person traveling on the host company's airline, railroad, bus, boat, or other public conveyance.

(2) (a) The nonrefundable application fee for a public service permit is \$75.

(b) The initial permit fee for a public service permit is \$250.

(c) The bond amount required for a public service permittee is the penal sum of \$1,000.

(3) (a) To renew a public service permit, a person shall comply with Section 32B-10-203.

(b) The renewal fee for a public service permit is \$30 for each regularly numbered passenger airplane flight, passenger train, bus, boat, or any other regularly scheduled public conveyance upon which an alcoholic product is sold, offered for sale, or furnished.

Amended by Chapter 334, 2011 General Session

32B-10-304. Specific operational requirements for a public service permit.

(1) (a) In addition to complying with Section 32B-10-206, a public service permittee and staff of the public service permittee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a public service permittee;

(ii) individual staff of a public service permittee; or

(iii) both a public service permittee and staff of the public service permittee.

(2) (a) A public service permittee whose public conveyances operate on an interstate basis may do the following:

(i) purchase an alcoholic product outside of the state;

(ii) bring an alcoholic product purchased outside of the state into the state; and

(iii) sell, offer for sale, and furnish an alcoholic product purchased outside of the state to a passenger traveling on the public service permittee's public conveyance for consumption while en route on the public conveyance.

(b) A public service permittee whose public conveyance operates solely within the state, to sell, offer for sale, or furnish to a passenger traveling on the public service permittee's public conveyance for consumption while en route on the public conveyance, shall purchase:

(i) liquor from a state store or package agency; and

(ii) beer from a beer wholesaler licensee.

(3) (a) A public service permittee may establish a hospitality room in which an alcoholic product may be stored, sold, offered for sale, furnished, and consumed, if:

(i) the room is located within a depot, terminal, or similar facility adjacent to and servicing the public service permittee's airline, railroad, bus, boat, or other public conveyance;

(ii) the room is completely enclosed and the interior is not visible to the public;

(iii) the sale, offer for sale, or furnishing of an alcoholic product is made only to a

person:

(A) then in transit using the host company's airline, railroad, bus line, or other public conveyance; and

(B) holding a valid boarding pass or similar travel document issued by the host company; and

(iv) (A) liquor is purchased from:

(I) a state store; or

(II) a package agency; and

(B) beer is purchased from a beer wholesaler licensee.

(b) (i) A public service permittee operating a hospitality room shall display in a prominent place in the hospitality room, a sign in large letters that consists of text in the following order:

(A) a header that reads: "WARNING";

(B) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";

(C) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";

(D) a header that reads: "WARNING"; and

(E) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(ii) (A) The text described in Subsections (3)(b)(i)(A) through (C) shall be in a different font style than the text described in Subsections (3)(b)(i)(D) and (E).

(B) The warning statements in the sign described in Subsection (3)(b)(i) shall be in the same font size.

(iii) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.

(c) A hospitality room shall be operated in accordance with this chapter and rules adopted by the commission.

Amended by Chapter 334, 2011 General Session

32B-10-401. Title.

This part is known as "Industrial or Manufacturing Use Permit."

Enacted by Chapter 276, 2010 General Session

32B-10-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-10-403. Specific application requirements for industrial or manufacturing use permit.

(1) To obtain an industrial or manufacturing use permit, in addition to complying with Section 32B-10-202, a person shall submit to the department:

(a) a floor plan of the immediate area within the premises in which the person

proposes that an alcoholic product be used, mixed, stored, sold, offered for sale, furnished, or consumed; and

(b) if the person is applying for an industrial or manufacturing use permit to produce gasohol or any alcoholic product, evidence that the person has:

(i) an approved Notice of Registration of Distilled Spirits Plant; and

(ii) the appropriate permit from the federal Alcohol and Tobacco Tax and Trade Bureau.

(2) (a) The nonrefundable application fee for an industrial or manufacturing use permit is \$75.

(b) The one-time special use permit fee for an industrial or manufacturing use permit is \$250.

(c) The bond amount required for an industrial or manufacturing use permit is the penal sum of \$1,000.

Amended by Chapter 334, 2011 General Session

32B-10-404. Specific operational requirements for industrial or manufacturing use permit.

(1) (a) In addition to complying with Section 32B-10-206, an industrial or manufacturing use permittee and staff of the industrial or manufacturing use permittee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an industrial or manufacturing use permittee;

(ii) individual staff of an industrial or manufacturing use permittee; or

(iii) an industrial or manufacturing use permittee and staff of the industrial or manufacturing use permittee.

(2) An industrial or manufacturing use permittee may produce for lawful use and sale the following:

(a) vinegar;

(b) preserved nonintoxicating cider;

(c) a food preparation;

(d) a United States Pharmacopoeia or national formulary preparation in conformity with Title 58, Chapters 17b, 37, 37a, 37b, and 37c, if the preparation:

(i) conforms to standards established by:

(A) the Department of Agriculture and Food; and

(B) the Department of Health; and

(ii) contains no more alcohol than is necessary to preserve or extract the medicinal, flavoring, or perfumed properties of the treated substances; and

(e) wood and denatured alcohol if manufactured in compliance with the formulas and regulations under Title 27, C.F.R. Parts 19, 20, and 21.

(3) (a) An industrial or manufacturing use permittee that produces patent or proprietary medicines containing alcohol may sell or offer for sale the medicines in the original and unbroken container if the medicine contains sufficient medication to prevent its use as an alcoholic product.

(b) An industrial or manufacturing use permittee described in this Subsection (3)

shall, upon request by the department, provide a sufficient sample of the medicine to enable the department to have the medicine analyzed for purposes of this section.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-10-501. Title.

This part is known as "Scientific or Educational Use Permit."

Enacted by Chapter 276, 2010 General Session

32B-10-502. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-10-503. Specific application requirements for scientific or educational use permit.

(1) To obtain a scientific or educational use permit, a person shall comply with Section 32B-10-202.

(2) The one-time special use permit fee for a scientific or educational use permit is \$125.

Amended by Chapter 334, 2011 General Session

32B-10-601. Title.

This part is known as "Religious Use of Alcoholic Products."

Enacted by Chapter 276, 2010 General Session

32B-10-602. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-10-603. Specific application requirements for religious wine use permit.

(1) To purchase an alcoholic product from the department at the department's cost plus freight charges, a religious organization shall obtain a religious wine use permit.

(2) To obtain a religious wine permit, a person shall comply with Section 32B-10-202.

(3) The one-time special use permit fee for a religious wine use permit is \$125.

Amended by Chapter 334, 2011 General Session

32B-10-604. Specific operational requirements for religious wine use permit.

(1) (a) In addition to complying with Section 32B-10-206, a religious wine permittee and staff of the religious wine permittee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a religious wine permittee;
- (ii) individual staff of a religious wine permittee; or
- (iii) a religious wine permittee and staff of the religious wine permittee.

(2) A religious wine use permittee may purchase wine from a state store as the department may designate at the department's cost plus freight charges.

(3) A religious wine use permittee may not use wine purchased under a religious wine use permit for a purpose other than a religious purpose.

Amended by Chapter 369, 2012 General Session

32B-10-605. Religious organization exemption.

(1) A religious organization that provides or allows to be provided an alcoholic product to a person as part of the religious organization's religious services:

(a) does not violate this title by providing or allowing the provision of an alcoholic product as part of a religious service; and

(b) is not required to hold a license or special use permit to provide or allow the provision of an alcoholic product for religious services.

(2) This exemption does not exempt a religious organization from complying with this title with respect to an alcoholic product purchased by the religious organization for a purpose other than one purpose stated in Subsection (1).

Enacted by Chapter 276, 2010 General Session

32B-10-701. Title.

This part is known as "Health Care Facility or Practitioner Use of Alcoholic Products."

Enacted by Chapter 276, 2010 General Session

32B-10-702. Definitions.

As used in this part, "health care facility" means a facility that is licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Enacted by Chapter 276, 2010 General Session

32B-10-703. Health care facility exemption.

(1) (a) This Subsection (1) applies to a health care facility that administers or allows to be administered an alcoholic product to a patient of the health care facility if the alcoholic product is prescribed by a person licensed by the state to write a

prescription.

(b) A health care facility described in Subsection (1)(a):

(i) is not in violation of this title; and

(ii) is not required to hold a license or special use permit to make or allow the administration of an alcoholic product.

(2) This exemption does not apply to an alcoholic product purchased by a health care facility for administration to a patient or a use other than one stated in Subsection (1).

Enacted by Chapter 276, 2010 General Session

32B-10-704. Health care practitioner exemption.

(1) This section applies to an individual who:

(a) (i) is a health care practitioner; or

(ii) is a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act;

(b) is acting within the scope of individual's professional responsibility; and

(c) in a professional capacity, prescribes, prepares, or administers an alcoholic product to a person being treated or within the scope of the health care practitioner's license authority.

(2) A person described in Subsection (1):

(a) is not in violation of this title; and

(b) is not required to hold any type of license or permit to use an alcoholic product professionally.

Enacted by Chapter 276, 2010 General Session

32B-11-101. Title.

This chapter is known as the "Manufacturing and Related Licenses Act."

Enacted by Chapter 276, 2010 General Session

32B-11-102. Definitions.

As used in this chapter, "manufacturing license" means an alcoholic product manufacturing license issued under this chapter.

Enacted by Chapter 276, 2010 General Session

**32B-11-201. Commission's power to issue a manufacturing license --
Certificates of approval.**

(1) (a) Except as provided in Section 32B-11-202, before a person may manufacture an alcoholic product in this state, the person shall obtain an alcoholic product manufacturing license issued by the commission in accordance with this part.

(b) A separate license is required for each place of storage, sale, and manufacture of an alcoholic product.

(c) A violation of this Subsection (1) is a class B misdemeanor.

(2) The commission may issue an alcoholic product manufacturing license to a

manufacturer whose business is located in this state for the storage, sale, and manufacture of an alcoholic product for each type of manufacturing license provided by this chapter.

(3) The types of manufacturing licenses issued under this chapter are known as:

- (a) a winery manufacturing license;
- (b) a distillery manufacturing license; and
- (c) a brewery manufacturing license.

(4) (a) A brewer located outside the state is not required to be licensed under this chapter.

(b) A brewer described in Subsection (4)(a) shall obtain a certificate of approval from the department before selling or delivering:

- (i) beer to a beer wholesaler licensee in this state;
- (ii) a flavored malt beverage to:
 - (A) the department; or
 - (B) a military installation; or
- (iii) if a small brewer, beer to one of the following in the state:
 - (A) a beer wholesaler licensee;
 - (B) a beer retailer; or
 - (C) an event permittee.

(c) To obtain a certificate of approval, a brewer shall submit to the department:

- (i) a written application in a form prescribed by the department;
- (ii) a nonrefundable \$75 application fee;
- (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of approval is not issued;

(iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt beverage; and

(v) any other information the commission or department may require.

(d) (i) One of the following shall sign and verify a written application under this Subsection (4) by oath or affirmation:

- (A) a partner if the brewer is a partnership; or
- (B) an executive officer, manager, or person specifically authorized by a corporation or limited liability company to sign the application.

(ii) A brewer filing an application shall attach to the application written evidence of the authority of the person described in Subsection (4)(d)(i) to sign the application.

(e) (i) A certificate of approval under this Subsection (4) expires on December 31 of each year.

(ii) A brewer desiring to renew its certificate of approval shall submit to the department by no later than November 30 of the year the certificate of approval expires:

(A) a completed renewal application in the form prescribed by the department; and

(B) a renewal fee of \$250.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate of approval effective on the date the existing certificate of approval expires.

(5) (a) An importer or supplier of beer, heavy beer, or flavored malt beverages

who is not required to be licensed under this title shall obtain a certificate of approval from the department before selling or delivering:

- (i) beer to a beer wholesaler licensee in this state; or
- (ii) heavy beer or a flavored malt beverage to:
 - (A) the department; or
 - (B) a military installation.

(b) To obtain a certificate of approval, an importer or supplier described in Subsection (5)(a) shall submit to the department:

- (i) a written application in a form prescribed by the department;
- (ii) a nonrefundable \$75 application fee;
- (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of approval is not issued;
- (iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt beverage; and

(v) any other information the commission or department may require.

(c) (i) One of the following shall sign and verify a written application under this Subsection (5) by oath or affirmation:

- (A) a partner if the importer or supplier is a partnership; or
- (B) an executive officer, manager, or person specifically authorized by a corporation or limited liability company to sign the application.

(ii) An importer or supplier filing an application under this Subsection (5) shall attach to the application written evidence of the authority of the person described in Subsection (5)(c)(i) to sign the application.

(d) (i) A certificate of approval under this Subsection (5) expires on December 31 of each year.

(ii) An importer or supplier desiring to renew its certificate of approval shall submit to the department by no later than November 30 of the year the certificate of approval expires:

(A) a completed renewal application in the form prescribed by the department; and

(B) a renewal fee of \$250.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate of approval effective on the date the existing certificate of approval expires.

(6) (a) Subject to Subsection (7), a brewer, importer, or supplier required to hold a certificate of approval under this section may not distribute beer in this state except under a written agreement with a beer wholesaler licensee in this state.

(b) An agreement described in Subsection (6)(a) shall:

(i) create a restricted exclusive sales territory that is mutually agreed upon by the persons entering into the agreement;

(ii) designate the one or more brands that may be distributed in the sales territory; and

(iii) set forth the exact geographical area of the sales territory.

(c) A brewer, importer of beer, or supplier of beer may have more than one agreement described in this Subsection (6) if each brand of the brewer, importer, or

supplier distributed in the state is covered by one exclusive sales territory.

(d) A brewer, importer of beer, or supplier of beer may not enter into an agreement with more than one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or any portion of the sales territory.

(7) A small brewer is not subject to the requirements of Subsection (6).

Amended by Chapter 334, 2011 General Session

32B-11-202. Exemption for manufacture in personal residence of fermented beverage.

(1) As used in this section, "fermented alcoholic beverage" means:

- (a) beer;
- (b) heavy beer; or
- (c) wine.

(2) An individual may without being licensed under this chapter manufacture in the individual's personal residence a fermented alcoholic beverage if:

- (a) the individual is 21 years of age or older;
- (b) the individual manufactures no more than:
 - (i) 100 gallons in a calendar year, if there is one individual that is 21 years of age or older residing in the household; or
 - (ii) 200 gallons in a calendar year, if there are two or more individuals who are 21 years of age or older residing in the household;
- (c) the fermented alcoholic beverage is manufactured and used for personal or family use and consumption, including use at an organized event where fermented alcoholic beverages are judged as to taste and quality; and
- (d) the fermented alcoholic beverage is not for:
 - (i) sale or offering for sale; or
 - (ii) consumption on a licensed premise.

(3) An individual may store a fermented alcoholic beverage manufactured as provided in Subsection (2) in the individual's personal residence.

(4) A fermented alcoholic beverage manufactured in accordance with Subsection (2) may be removed from the premises where it is manufactured:

- (a) for personal or family use, including use at an organized event where fermented alcoholic beverages are judged as to taste and quality;
- (b) if the fermented alcoholic beverage is transported in compliance with Section 41-6a-526; and
- (c) if the fermented alcoholic beverage is removed only in the following quantities:
 - (i) for personal and family use that is unrelated to an organized event where fermented alcoholic beverages are judged as to taste and quality, the quantity that may be possessed at one time is:
 - (A) one liter of wine for each individual who is 21 years of age or older residing in the household;
 - (B) 72 ounces of heavy beer for each individual who is 21 years of age or older residing in the household; or
 - (C) 72 ounces of beer for each individual who is 21 years of age or older

residing in the household; and

(ii) for on-premise consumption at an organized event where fermented alcoholic beverages are judged as to taste and quality, the quantity that may be removed for each organized event is:

(A) one liter of wine for each wine category in which the individual enters, except that the individual may not remove wine for more than three categories for the same organized event;

(B) 72 ounces of heavy beer for each heavy beer category in which the individual enters, except that the individual may not remove heavy beer for more than three categories for the same organized event; or

(C) 72 ounces of beer for each beer category in which the individual enters, except that the individual may not remove beer for more than three categories for the same organized event.

(5) A partnership, corporation, or association may not manufacture a fermented alcoholic beverage under this section for personal or family use and consumption without obtaining a license under this chapter, except that an individual who operates a brewery under this chapter as an individual owner or in partnership with others, may remove beer from the brewery for personal or family use in the amounts described in Subsection (2)(b).

Enacted by Chapter 276, 2010 General Session

32B-11-203. Application requirements for a manufacturing license.

To obtain an alcoholic product manufacturing license, a person shall submit to the department:

- (1) a written application in a form prescribed by the department;
- (2) a nonrefundable application fee of \$300;
- (3) an initial license fee of \$3,800:
 - (a) unless otherwise provided in this chapter; and
 - (b) that is refundable if a license is not issued;
- (4) written consent of the local authority;
- (5) a statement of the purpose for which the person has applied for the manufacturing license;
- (6) evidence that the person is authorized by the United States to manufacture an alcoholic product;
- (7) a bond as specified by Section 32B-11-207;
- (8) evidence that the person is carrying public liability insurance in an amount and form satisfactory to the department;
- (9) a signed consent form stating that the manufacturing licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the licensed premises;
- (10) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
- (11) any other information the commission or department may require.

Amended by Chapter 334, 2011 General Session

32B-11-204. Renewal requirements for a manufacturing license.

- (1) A manufacturing license expires on December 31 of each year.
- (2) To renew a manufacturing license, a person shall submit by no later than November 30 of the year the license expires:
 - (a) a completed renewal application to the department, in a form prescribed by the department; and
 - (b) a renewal fee in the following amount of:
 - (i) \$2,900, except for a wine manufacturing license described in Subsection (2)(b)(ii); or
 - (ii) \$1,400 for a winery manufacturing license if the winery manufacturing licensee produces less than 20,000 gallons of wine in the calendar year preceding the year in which the manufacturing licensee seeks renewal.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of a manufacturing license effective on the date the existing manufacturing license expires.

Amended by Chapter 334, 2011 General Session

32B-11-205. Specific qualifications for a manufacturing license.

- (1) The commission may not issue a manufacturing license to a person who:
 - (a) is disqualified under Section 32B-1-304; or
 - (b) has not met an applicable federal requirement for the operation of a winery, distillery, or brewery.
- (2) If a person to whom a manufacturing license is issued under this chapter no longer possesses the qualifications required by this title for obtaining that manufacturing license, the commission may suspend or revoke that manufacturing license.

Enacted by Chapter 276, 2010 General Session

32B-11-206. Duties of commission and department before issuing manufacturing license.

- (1) (a) Before the commission may issue a manufacturing license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a manufacturing license should be issued.
 - (b) The department shall forward to the commission the information and recommendations under Subsection (1)(a) to aid in the commission's determination.
- (2) Before issuing a manufacturing license, the commission shall:
 - (a) determine that the person filed a complete application and is in compliance with:
 - (i) Sections 32B-11-203 and 32B-11-205; and
 - (ii) the relevant part under this chapter for the specific type of manufacturing license;
 - (b) determine that the person is not disqualified under Section 32B-1-304;
 - (c) consider the physical characteristics of the premises where an alcoholic product is proposed to be stored, mixed, or manufactured such as:

- (i) condition of the premises; and
- (ii) safety and security considerations;
- (d) consider the person's ability to properly use the manufacturing license within the requirements of this title and the commission rules including:
 - (i) manufacturing capacity;
 - (ii) extent of product distribution; and
 - (iii) the nature and type of entity making use of the manufacturing license;
- (e) consider any special factor as provided in this chapter that may be unique to the specific type of manufacturing license sought by the person;
- (f) approve of the location and equipment used by the person to manufacture an alcoholic product; and
- (g) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-11-207. Bond for manufacturing license.

(1) (a) A manufacturing licensee shall post a cash bond or surety bond in the penal sum of \$10,000 payable to the department.

(b) A manufacturing licensee shall procure and maintain a bond required by this section for as long as the manufacturing licensee continues to operate as a manufacturing licensee.

(2) A bond posted under this section shall be:

- (a) in a form approved by the attorney general; and
- (b) conditioned upon a manufacturing licensee's faithful compliance with this title and the rules of the commission.

(3) If a surety bond posted by a manufacturing licensee under this section is cancelled due to a manufacturing licensee's negligence, the department may assess a \$300 reinstatement fee.

(4) No part of a bond posted under this section may be withdrawn during the period the manufacturing license is in effect.

(5) (a) A bond posted by a manufacturing licensee under this section may be forfeited if the manufacturing license is revoked.

(b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a manufacturing licensee for money owed the department under this title without the commission first revoking the manufacturing license.

Enacted by Chapter 276, 2010 General Session

32B-11-208. General operational requirements for manufacturing license.

(1) (a) A manufacturing licensee and staff of the manufacturing licensee shall comply with this title and the rules of the commission, including the relevant part of this chapter applicable to the type of manufacturing license held by the manufacturing licensee.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a manufacturing licensee;

- (ii) individual staff of a manufacturing licensee; or
- (iii) a manufacturing licensee and staff of the manufacturing licensee.
- (2) A manufacturing licensee shall prominently display the manufacturing license on the licensed premises.
- (3) (a) A manufacturing licensee shall make and maintain the records required by the department.
- (b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (3).
- (4) A manufacturing licensee may not sell liquor within the state except to:
 - (a) the department; or
 - (b) a military installation.
- (5) A manufacturing license may not be transferred from one location to another location, without prior written approval of the commission.
- (6) (a) A manufacturing licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.
- (b) A manufacturing license has no monetary value for any type of disposition.
- (7) A manufacturing licensee may not advertise its product in violation of this title or any other federal or state law, except that nothing in this title prohibits the advertising or solicitation of an order for industrial alcohol from a holder of a special use permit.
- (8) A manufacturing licensee shall from time to time, on request of the department, furnish for analytical purposes a sample of the alcoholic product that the manufacturing licensee has:
 - (a) for sale; or
 - (b) in the course of manufacture for sale in this state.
- (9) The commission may prescribe by policy or rule, consistent with this title, the general operational requirements of a manufacturing licensee relating to:
 - (a) physical facilities;
 - (b) conditions of storage, sale, or manufacture of an alcoholic product;
 - (c) storage and sales quantity limitations; and
 - (d) other matters considered appropriate by the commission.

Enacted by Chapter 276, 2010 General Session

32B-11-209. Notifying department of change in ownership.

The commission may suspend or revoke a manufacturing license if the manufacturing licensee does not immediately notify the department of a change in:

- (1) ownership of the manufacturing licensee;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-11-301. Title.

This part is known as "Winery Manufacturing License."

Enacted by Chapter 276, 2010 General Session

32B-11-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-303. Specific authority and operational requirements for winery manufacturing license.

(1) A winery manufacturing license allows a winery manufacturing licensee to:

- (a) store, manufacture, transport, import, or export wine;
- (b) sell wine at wholesale to the department and to out-of-state customers;
- (c) purchase liquor for fortifying wine, if the department is notified of the purchase and date of delivery; and

(d) warehouse on the licensed premises liquor that is manufactured or purchased for manufacturing purposes.

(2) (a) A wine, brandy, wine spirit, or other liquor imported under authority of a winery manufacturing license shall conform to the standards of identity and quality established in the regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

(b) The federal definitions, standards of identity, and quality and labeling requirements for wine, in regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with the laws of this state.

(3) If considered necessary, the commission or department may require:

- (a) the alteration of the plant, equipment, or licensed premises;
- (b) the alteration or removal of unsuitable wine-making equipment or material;
- (c) a winery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and wine-making equipment;

(d) that a marc, pomace, or fruit be destroyed, denatured, or removed from the licensed premises because it is considered:

- (i) unfit for wine making; or
- (ii) as producing or likely to produce an unsanitary condition;

(e) a winery manufacturing licensee to distill or cause to be distilled or disposed of under the department's supervision:

- (i) any unsound, poor quality finished wine; or
- (ii) unfinished wine that will not be satisfactory when finished; or

(f) that a record pertaining to the grapes and other materials and ingredients used in the manufacture of wine be available to the commission or department upon request.

(4) A winery manufacturing licensee may not permit wine to be consumed on its premises, except under the following circumstances:

(a) A winery manufacturing licensee may allow its staff to consume on the licensed premises wine as the winery manufacturing licensee furnishes to the staff without charge.

(b) A winery manufacturing licensee may allow a person who can lawfully purchase wine for wholesale or retail distribution to consume a bona fide sample of the winery manufacturing licensee's product on the licensed premises.

(c) A winery manufacturing licensee may operate on its licensed premises a retail facility allowing consumption of a sample on the licensed premises of wine as long as food is also available. This type of retail facility located on the licensed premises shall be operated or supervised by the winery manufacturing licensee.

Enacted by Chapter 276, 2010 General Session

32B-11-401. Title.

This part is known as "Distillery Manufacturing License."

Enacted by Chapter 276, 2010 General Session

32B-11-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-403. Specific authority and operational requirements for distillery manufacturing license.

(1) A distillery manufacturing license allows a distillery manufacturing licensee to:

(a) store, manufacture, transport, import, or export liquor;

(b) sell liquor to:

(i) the department;

(ii) an out-of-state customer; and

(iii) as provided in Subsection (2);

(c) purchase an alcoholic product for mixing and manufacturing purposes if the department is notified of:

(i) the purchase; and

(ii) the date of delivery; and

(d) warehouse on its licensed premises an alcoholic product that the distillery manufacturing licensee manufactures or purchases for manufacturing purposes.

(2) (a) Subject to the other provisions of this Subsection (2), a distillery manufacturing licensee may directly sell an alcoholic product to a person engaged within the state in:

(i) a mechanical or industrial business that requires the use of an alcoholic product; or

(ii) scientific pursuits that require the use of an alcoholic product.

(b) A person who purchases an alcoholic product under Subsection (2)(a) shall hold a valid special use permit issued in accordance with Chapter 10, Special Use Permit Act, authorizing the use of the alcoholic product.

(c) A distillery manufacturing licensee may sell to a special use permittee described in Subsection (2)(b) an alcoholic product only in the type for which the special use permit provides.

(d) The sale of an alcoholic product under this Subsection (2) is subject to rules prescribed by the department and the federal government.

(3) The federal definitions, standards of identity and quality, and labeling requirements for distilled liquor, in the regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with laws of this state.

(4) If considered necessary, the commission or department may require:

(a) the alteration of the plant, equipment, or licensed premises;

(b) the alteration or removal of unsuitable alcoholic product-making equipment or material;

(c) a distillery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

(d) that a record pertaining to the materials and ingredients used in the manufacture of an alcoholic product be made available to the commission or department upon request.

(5) A distillery manufacturing licensee may not permit an alcoholic product to be consumed on its premises, except that:

(a) a distillery manufacturing licensee may allow its staff to consume on the licensed premises an alcoholic product that the distillery furnishes to the staff without charge; and

(b) a distillery manufacturing licensee may allow a person who can lawfully purchase an alcoholic product for wholesale or retail distribution to consume a bona fide sample of the distillery manufacturing licensee's product on the licensed premises.

Enacted by Chapter 276, 2010 General Session

32B-11-501. Title.

This part is known as "Brewery Manufacturing License."

Enacted by Chapter 276, 2010 General Session

32B-11-502. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-503. Specific authority and operational requirements for brewery manufacturing license.

(1) A brewery manufacturing license allows a brewery manufacturing licensee

to:

(a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt beverages;

(b) sell heavy beer and a flavored malt beverage to:

(i) the department;

(ii) a military installation; or

(iii) an out-of-state customer;

(c) sell beer to a beer wholesaler licensee;

(d) in the case of a small brewer, in accordance with Subsection (5), sell beer manufactured by the small brewer to:

(i) a retail licensee;

(ii) an off-premise beer retailer; or

(iii) an event permittee; and

(e) warehouse on its premises an alcoholic product that the brewery manufacturing licensee manufactures or purchases for manufacturing purposes.

(2) A brewery manufacturing licensee may not sell the following to a person within the state except the department or a military installation:

(a) heavy beer; or

(b) a flavored malt beverage.

(3) If considered necessary, the commission or department may require:

(a) the alteration of the plant, equipment, or licensed premises;

(b) the alteration or removal of any unsuitable alcoholic product-making equipment or material;

(c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

(d) that a record pertaining to the materials and ingredients used in the manufacture of an alcoholic product be available to the commission or department upon request.

(4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored malt beverage to be consumed on the licensed premises, except under the circumstances described in this Subsection (4).

(a) A brewery manufacturing licensee may allow its off-duty staff to consume beer, heavy beer, or a flavored malt beverage on its premises without charge.

(b) A brewery manufacturing licensee may allow a person who can lawfully purchase the following for wholesale or retail distribution to consume a bona fide sample of the brewery manufacturing licensee's product on the licensed premises:

(i) beer;

(ii) heavy beer; or

(iii) a flavored malt beverage.

(c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail facility allowing consumption on premises of beer in a bottle or on draft if food is also available.

(ii) A retail facility located on the licensed premises of a brewery manufacturing licensee shall be operated or supervised by the brewery manufacturing licensee.

(iii) In operating a retail facility under this Subsection (4)(c), a brewery

manufacturing licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer Local Authority.

(5) (a) A small brewer shall own, lease, or maintain and control a warehouse facility located in this state for the storage of beer to be sold to a person described in Subsection (1)(d) if the small brewer:

- (i) (A) (I) is located in this state; and
- (II) holds a brewery manufacturing license; or
- (B) (I) is located outside this state; and
- (II) holds a certificate of approval to sell beer in this state; and

(ii) sells beer manufactured by the small brewer directly to a person described in Subsection (1)(d).

(b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless the beer:

- (i) is manufactured by the small brewer; and
- (ii) is first placed in the small brewer's warehouse facility in this state.

(c) (i) A small brewer warehouse shall make and maintain complete beer importation, inventory, tax, distribution, sales records, and other records as the department and State Tax Commission may require.

- (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:
 - (A) the department; and
 - (B) the State Tax Commission.

(iii) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (5), except that the provision is considered to include an action described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission, or an official or employee of the State Tax Commission.

(6) Subject to Subsection (7):

(a) A brewery manufacturing licensee may not sell beer in this state except under a written agreement with a beer wholesaler licensee in this state.

(b) An agreement described in Subsection (6)(a) shall:

(i) create a restricted exclusive sales territory that is mutually agreed upon by the persons entering into the agreement;

(ii) designate the one or more brands that may be distributed in the sales territory; and

(iii) set forth the exact geographical area of the sales territory.

(c) A brewery manufacturing licensee may have more than one agreement described in this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one exclusive sales territory.

(d) A brewery manufacturing licensee may not enter into an agreement with more than one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or any portion of the sales territory.

(7) A small brewer is not subject to the requirements of Subsection (6).

Amended by Chapter 334, 2011 General Session

32B-11-601. Title.

This part is known as the "Local Industry Representative License Act."

Enacted by Chapter 276, 2010 General Session

32B-11-602. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-603. Commission's power to issue local industry representative license.

(1) (a) Before a person described in Subsection (2) may represent an alcoholic product of a manufacturer, supplier, or importer, the person shall obtain a local industry representative license from the commission in accordance with this part.

(b) A violation of this Subsection (1) is a class B misdemeanor.

(2) The commission may issue a local industry representative license to a person who is:

(a) (i) an individual resident of Utah;

(ii) a Utah partnership;

(iii) a Utah corporation; or

(iv) a Utah limited liability company; and

(b) employed by a manufacturer, supplier, or importer, to represent a liquor product with the department, a package agency, licensee, or permittee under this title, whether compensated by salary, commission, or another means.

(3) An individual staff member of a local industry representative licensee is not required to be separately licensed.

(4) A local industry representative may represent more than one manufacturer, supplier, or importer at a time.

(5) (a) A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products with the department, a package agency, licensee, or permittee, except that staff of a manufacturer, supplier, or importer who is not a local industry representative shall register with the department, on a form provided by the department, before the staff represents an alcoholic product while in the state with the department, a package agency, licensee, or permittee.

(b) A manufacturer, supplier, or importer described in Subsection (5)(a) and its staff are subject to the same operational requirements of this part and Chapter 4, Criminal Offenses and Procedure Act.

Enacted by Chapter 276, 2010 General Session

32B-11-604. Application for local industry representative license.

(1) To obtain a local industry representative license, a person shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable \$75 application fee;

(c) an initial license fee of \$125, which is refundable if a local industry representative license is not issued;

- (d) verification that the person is:
 - (i) a resident of Utah;
 - (ii) a Utah partnership;
 - (iii) a Utah corporation; or
 - (iv) a Utah limited liability company;
 - (e) an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent;
 - (f) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, or any law enforcement officer to have an unrestricted right to enter, during normal business hours, the specific premises where the local industry representative conducts business;
 - (g) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
 - (h) any other information the commission or department may require.
- (2) A local industry representative licensee is not required to pay an additional license fee to represent more than one manufacturer, supplier, or importer.

Amended by Chapter 334, 2011 General Session

32B-11-605. Renewal requirements for local industry representative license.

- (1) A local industry representative license expires on December 31 of each year.
- (2) To renew a local industry representative license, a person shall submit to the department by no later than November 30 of the year the license expires:
 - (a) a completed renewal application in a form prescribed by the department;
 - (b) a renewal fee of \$125; and
 - (c) an affidavit stating the name and address of any manufacturer, supplier, or importer the local industry representative licensee represents at the time of submitting the renewal application.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of the local industry representative license effective on the date the existing local industry representative license expires.

Amended by Chapter 334, 2011 General Session

32B-11-606. Specific qualifications for local industry representative.

- (1) The commission may not issue a local industry representative license to:
 - (a) a person who is disqualified under Section 32B-1-304; or
 - (b) unless otherwise provided:
 - (i) a retail licensee that sells, offers for sale, or furnishes liquor;
 - (ii) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
 - (iii) an individual, partnership, corporation, or limited liability company who holds an interest in a retail licensee that sells, offers for sale, or furnishes liquor.
- (2) If a person to whom a local industry representative license is issued under this part no longer possesses the qualifications required by this title for obtaining that local industry representative license, the commission may suspend or revoke that local

industry representative license.

Enacted by Chapter 276, 2010 General Session

32B-11-607. Commission and department duties before issuing local representative license.

(1) (a) Before the commission may issue a local industry representative license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a local industry representative license should be issued.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a local industry representative license, the commission shall:

(a) determine that the person filed a complete application and is in compliance with Sections 32B-11-604 and 32B-11-606;

(b) determine that the person is not disqualified under Section 32B-1-304; and

(c) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-11-608. Operational requirements for local industry representative license.

(1) (a) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state, shall comply with this title and rules of the commission.

(b) If a person knowingly violates Subsection (1)(a):

(i) the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(A) a local industry representative licensee;

(B) individual staff of a local industry representative licensee; or

(C) both a local industry representative licensee and staff of the local industry representative licensee; and

(ii) if the conditions of Subsection (1)(c) are met, the commission may order:

(A) the removal of the manufacturer's, supplier's, or importer's products from the department's sales list; and

(B) a suspension of the department's purchase of those products for a period determined by the commission.

(c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

(i) directly commits the violation; or

(ii) solicits, requests, commands, encourages, or intentionally aides another to engage in the violation.

(2) A local industry representative licensee shall display its license in the local industry representative licensee's principal place of business.

(3) (a) A local industry representative licensee shall maintain on file with the

department a current accounts list of the names and addresses of the manufacturers, suppliers, and importers the local industry representative licensee represents.

(b) A local industry representative licensee shall notify the department in writing of a change to its accounts list within 14 days from the date the local industry representative licensee:

- (i) acquires the account of a manufacturer, supplier, or importer; or
- (ii) loses the account of a manufacturer, supplier, or importer.

(4) (a) A local industry representative licensee shall make and maintain the records the department requires for at least three years.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) Staff of a local industry representative licensee may not be:

- (a) a retail licensee that sells, offers for sale, or furnishes liquor;
- (b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
- (c) a minor.

(6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A local industry representative license has no monetary value for any type of disposition.

(7) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state:

(a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act, may:

(i) assist the department in:

- (A) ordering, shipping, and delivering merchandise;
- (B) providing new product notification;
- (C) obtaining listing and delisting information;
- (D) receiving price quotations;
- (E) providing product sales analysis;
- (F) conducting shelf management; and
- (G) conducting educational seminars; and

(ii) to acquire new listings:

(A) solicit orders from the department; and

(B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;

(b) may not sell liquor within the state except to:

- (i) the department; and
- (ii) a military installation;

(c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;

(d) may not sell or furnish any liquor to any person within this state other than to:

- (i) the department; or
- (ii) a military installation;

(e) except as otherwise provided, may not advertise a product the local industry

representative licensee represents in violation of this title or any other federal or state law;

(f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and

(g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 by the department.

(8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).

(a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) An industry representative sample of liquor may not exceed one liter.

(ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) a flavored malt beverage.

(c) An industry representative sample may only be of a product not presently listed on the department's sales list.

(d) (i) An industry representative sample shall be shipped:

(A) prepaid by the manufacturer, supplier, or importer;

(B) by common carrier and not via United States mail; and

(C) directly to the department's central administrative warehouse office.

(ii) An industry representative sample may not be shipped to any other location within the state.

(e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:

(i) clearly identifying the product as an "industry representative sample"; and

(ii) clearly stating:

(A) the FOB case price of the product; and

(B) the name of the local industry representative for whom it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to a container a label clearly identifying the product as an "industry representative sample."

(h) The department shall:

(i) account for and record each industry representative sample received;

(ii) account for the industry representative sample's disposition; and

(iii) maintain a record of the industry representative sample and its disposition for a two-year period.

(i) An industry representative sample may not leave the premises of the department's central administrative warehouse office.

(j) A local industry representative licensee's and a local industry representative

licensee's staff may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.

(k) The department shall destroy the unused contents of an opened product remaining after a product is sampled under controlled and audited conditions established by the department.

(l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) the contents destroyed under controlled and audited conditions established by the department; or

(ii) added to the inventory of the department for sale to the public.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-11-609. Notifying department of change in ownership.

The commission may suspend or revoke a local industry representative license if a local industry representative licensee does not immediately notify the department of a change in:

(1) ownership of the business;

(2) for a corporate owner, the:

(a) corporate officers or directors; or

(b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or

(3) for a limited liability company:

(a) managers; or

(b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-12-101. Title.

This chapter is known as the "Liquor Warehousing License Act."

Enacted by Chapter 276, 2010 General Session

32B-12-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-12-201. Commission's power to issue liquor warehousing license.

(1) (a) Before a person may warehouse, distribute, or transport liquor for resale to a wholesale or retail customer, the person shall first obtain a liquor warehousing license issued by the commission in accordance with this chapter.

(b) A separate liquor warehousing license is required for each warehousing

facility.

- (c) A violation of this Subsection (1) is a class B misdemeanor.
- (2) The commission may issue a liquor warehousing license in accordance with this chapter for the warehousing, distribution, and transportation of liquor.

Enacted by Chapter 276, 2010 General Session

32B-12-202. Application requirements for liquor warehousing license.

To obtain a liquor warehousing license, a person shall submit to the department:

- (1) a written application in a form prescribed by the department;
- (2) a nonrefundable \$300 application fee;
- (3) an initial license fee of \$850, which is refundable if a liquor warehousing license is not issued;
- (4) written consent of the local authority;
- (5) a copy of the person's current business license;
- (6) a bond as specified by Section 32B-12-206;
- (7) a floor plan of the person's warehouse, including the area in which the person proposes that liquor be stored;
- (8) evidence that the person is carrying public liability insurance in an amount and form satisfactory to the department;
- (9) a signed consent form stating that the liquor warehousing licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the licensed premises;
- (10) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
- (11) any other information the commission or department may require.

Amended by Chapter 334, 2011 General Session

32B-12-203. Renewal requirements for liquor warehousing license.

- (1) A liquor warehousing license expires on December 31 of each year.
- (2) To renew a liquor warehousing license, a person shall submit to the department by no later than November 30 of the year the license expires:
 - (a) a completed renewal application in a form prescribed by the department; and
 - (b) a renewal fee of \$1,200.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of the liquor warehousing license effective on the date the existing liquor warehousing license expires.

Amended by Chapter 334, 2011 General Session

32B-12-204. Specific qualifications for liquor warehousing license.

- (1) The commission may not issue a liquor warehousing license to a person who is disqualified under Section 32B-1-304.
- (2) A person, through its staff, or otherwise, either directly or indirectly, may not hold at the same time both a liquor warehousing license and another kind of package

agency, license, or permit issued under this title except:

- (a) a temporary beer event permit;
 - (b) a manufacturing license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act; or
 - (c) a beer wholesaling license issued in accordance with this chapter.
- (3) If a person to whom a liquor warehousing license is issued under this chapter no longer possesses the qualifications required by this title for obtaining that liquor warehousing license, the commission may suspend or revoke that liquor warehousing license.

Enacted by Chapter 276, 2010 General Session

32B-12-205. Duties of commission and department before issuing liquor warehousing license.

(1) (a) Before the commission may issue a warehousing license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a liquor warehousing license should be issued.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a liquor warehousing license, the commission shall:

(a) determine that the person filed a complete application and has complied with Sections 32B-12-202 and 32B-12-204;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the physical characteristics of the premises where it is proposed that liquor be warehoused, such as:

(i) location;

(ii) proximity to transportation; and

(iii) condition, size, and security of the licensed premises;

(d) consider the person's ability to properly use the liquor warehousing license within the requirements of this title and the commission rules including:

(i) the types of products other than liquor that the person is warehousing;

(ii) the brands of liquor the person intends to warehouse; and

(iii) the means the person intends to use to distribute the liquor; and

(e) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-12-206. Bond for liquor warehousing license.

(1) (a) A liquor warehouse licensee shall post a cash bond or surety bond in the penal sum of \$10,000 payable to the department.

(b) A liquor warehouse licensee shall procure and maintain the bond required by this section for as long as the liquor warehouse licensee continues to operate as a liquor warehouse licensee.

(2) A bond posted under this section shall be:

- (a) in a form approved by the attorney general; and
 - (b) conditioned upon the liquor warehouser licensee's faithful compliance with this title and the rules of the commission.
- (3) If a surety bond posted by a liquor warehouser licensee under this section is canceled due to a liquor warehouser licensee's negligence, the department may assess a \$300 reinstatement fee.
- (4) No part of a bond posted under this section may be withdrawn during the period the liquor warehousing license is in effect.
- (5) (a) A bond posted by a liquor warehouser licensee may be forfeited if the liquor warehousing license is revoked.
- (b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a liquor warehouser licensee for money owed the department under this title without the commission first revoking the liquor warehousing license.

Enacted by Chapter 276, 2010 General Session

32B-12-301. General operational requirements for liquor warehousing license.

- (1) (a) A liquor warehouser licensee and staff of the liquor warehouser licensee shall comply with this title and the rules of the commission.
- (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
- (i) a liquor warehouser licensee;
 - (ii) individual staff of a liquor warehouser licensee; or
 - (iii) both a liquor warehouser licensee and staff of the liquor warehouser licensee.
- (2) (a) A liquor warehouser licensee shall make and maintain records required by the department.
- (b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).
- (3) A liquor warehousing license may not be transferred from one location to another location, without prior written approval of the commission.
- (4) (a) A liquor warehouser licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.
- (b) A liquor warehousing license has no monetary value for any type of disposition.
- (5) A liquor warehouser licensee may not employ a minor to handle an alcoholic product.
- (6) Liquor that is warehoused in this state and sold to an out-of-state consignee, may be transported out of the state only by a motor carrier regulated under Title 72, Chapter 9, Motor Carrier Safety Act.
- (7) Liquor that is warehoused in this state and sold to the department may be transported only by a motor carrier approved by the department.
- (8) Liquor transported to or from a liquor warehouser licensee's licensed premises shall be carried in a sealed conveyance that is made available for inspection

by the department while en route within the state.

(9) A liquor warehouser licensee may not ship, convey, distribute, or remove liquor from a warehouse in less than a full case lot.

(10) A liquor warehouser licensee may not ship, convey, distribute, or remove liquor from a warehouse to a consignee outside the state that is not licensed as a liquor wholesaler or retailer by the state in which the consignee is domiciled.

(11) A liquor warehouser licensee may not receive, warehouse, distribute, transport, ship, or convey liquor that the commission has not authorized the liquor warehouser licensee to handle through its warehouse.

(12) The commission may prescribe by policy or rule, consistent with this title, the general operational requirements of licensees relating to:

- (a) physical facilities;
- (b) conditions of storage, distribution, or transport of liquor; and
- (c) other matters considered appropriate by the commission.

Enacted by Chapter 276, 2010 General Session

32B-12-302. Notifying the department of change in ownership.

The commission may suspend or revoke a liquor warehousing license if a liquor warehouser licensee does not immediately notify the department of a change in:

- (1) ownership of the liquor warehouser licensee;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-13-101. Title.

This chapter is known as the "Beer Wholesaling License Act."

Enacted by Chapter 276, 2010 General Session

32B-13-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-13-201. Commission's power to issue beer wholesaling license.

(1) (a) Before a person may purchase, store, sell, offer for sale, distribute, or import beer to a person who sells at retail or acts in any way as a beer wholesaler, the person shall first obtain a beer wholesaling license issued by the commission in accordance with this chapter.

- (b) A violation of Subsection (1)(a) is a class A misdemeanor.
- (2) (a) The commission may issue a beer wholesaling license for the purchase, storage, sale, distribution, transportation, and import of beer.
- (b) A beer wholesaling license entitles the beer wholesaler licensee to:
 - (i) purchase and import beer into the state;
 - (ii) store beer in an approved warehouse; and
 - (iii) sell and distribute beer directly to:
 - (A) a beer retailer; or
 - (B) an event permittee.
- (3) Nothing in this section precludes a small brewer from selling beer the small brewer manufactures directly to:
 - (a) a retail licensee;
 - (b) an off-premise beer retailer; or
 - (c) an event permittee.

Amended by Chapter 334, 2011 General Session

32B-13-202. Application requirements for beer wholesaling license.

- To obtain a beer wholesaling license, a person shall submit to the department:
- (1) a written application in a form prescribed by the department;
 - (2) a nonrefundable \$300 application fee;
 - (3) an initial license fee of \$2,300 that is refundable if a beer wholesaling license is not issued;
 - (4) written consent of the local authority;
 - (5) a copy of the person's current business license;
 - (6) a bond as specified in Section 32B-13-206;
 - (7) a statement of the brands of beer the person is authorized to sell and distribute;
 - (8) a statement of the one or more sales territories in which the person is authorized to sell and distribute beer under an agreement required by Section 32B-11-201 or 32B-11-503;
 - (9) evidence that the person is carrying public liability insurance in an amount and form satisfactory to the department;
 - (10) a signed consent form stating that the beer wholesaling licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the licensed premises;
 - (11) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
 - (12) any other information that the commission or department may require.

Amended by Chapter 334, 2011 General Session

32B-13-203. Renewal requirements for beer wholesaling license.

- (1) A beer wholesaling license expires on December 31 of each year.
- (2) To renew a beer wholesaling license, a person shall submit to the department by no later than November 30 of the year the license expires:

- (a) a completed renewal application in a form prescribed by the department; and
- (b) a renewal fee in the following amount:

Case Sales in Previous License Year for the Licensee	Renewal Fee
under 500,000 cases	\$1,200
equals or exceeds 500,000 cases but less than 1,000,000 cases	\$2,350
equals or exceeds 1,000,000 cases	\$3,500.

(3) Failure to meet the renewal requirements results in an automatic forfeiture of the beer wholesaling license effective on the date the existing beer wholesaling license expires.

Amended by Chapter 334, 2011 General Session

32B-13-204. Specific qualifications for beer wholesaling license.

- (1) The commission may not issue a beer wholesaling license to a person who:
 - (a) is disqualified under Section 32B-1-304; or
 - (b) does not meet any applicable federal requirement for beer wholesaling.
- (2) (a) The commission may not issue one of the following licenses to a beer wholesaler licensee simultaneously with the beer wholesaling license, and a beer wholesaler licensee may not, directly or indirectly, hold, through a wholly or partially owned subsidiary or otherwise, one of the following licenses:
 - (i) a brewery manufacturing license; or
 - (ii) a beer retailer license.
- (b) The commission may not issue to a beer retailer, and a beer retailer, directly or indirectly, may not hold, through a wholly or partially owned subsidiary or otherwise, a beer wholesaling license.
- (3) If a person to whom a beer wholesaling license is issued under this chapter no longer possesses the qualifications required by this title for obtaining that beer wholesaling license, the commission may suspend or revoke that beer wholesaling license.

Enacted by Chapter 276, 2010 General Session

32B-13-205. Commission and department duties before issuing beer wholesaling license.

- (1) (a) Before the commission may issue a beer wholesaling license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a beer wholesaling license should be issued.
- (b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.
- (2) Before issuing a beer wholesaling license, the commission shall:
 - (a) determine that the person filed a complete application and is in compliance

with Sections 32B-13-202 and 32B-13-204;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the physical characteristics of the licensed premises where it is proposed that beer be stored by the person, such as:

(i) location;

(ii) proximity to transportation; and

(iii) condition, size, and security of the licensed premises;

(d) consider the person's ability to manage and operate a beer wholesaling operation, including:

(i) management experience;

(ii) past wholesaling experience;

(iii) the brands the person intends to wholesale; and

(iv) the means the person intends to use to distribute beer; and

(e) consider any other factor that the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-13-206. Bond for a beer wholesaling license.

(1) (a) A beer wholesaler licensee shall post a cash bond or surety bond in the penal sum of \$10,000 payable to the department.

(b) A beer wholesaler licensee shall procure and maintain a bond required by this section for as long as the beer wholesaler licensee continues to operate as a beer wholesaler licensee.

(2) A bond posted under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon a beer wholesaler licensee's faithful compliance with this title and the rules of the commission.

(3) If a surety bond posted by a beer wholesaler licensee under this section is canceled due to a beer wholesaler licensee's negligence, the department may assess a \$300 reinstatement fee.

(4) No part of a bond posted under this section may be withdrawn during the period the beer wholesaling license is in effect.

(5) (a) A bond posted under this section by a beer wholesaler licensee may be forfeited if the beer wholesaling license is revoked.

(b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a beer wholesaler licensee for money owed the department under this title without the commission first revoking the beer wholesaling license.

Enacted by Chapter 276, 2010 General Session

32B-13-301. General operational requirements for beer wholesaling license.

(1) (a) A beer wholesaler licensee and staff of the beer wholesaler licensee shall comply with this title and the rules of the commission.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a beer wholesaler licensee;
- (ii) individual staff of a beer wholesaler licensee; or
- (iii) both a beer wholesaler licensee and staff of the beer wholesaler licensee.

(2) (a) A beer wholesaler licensee shall make and maintain the records required by the department.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) A beer wholesaler licensee may not employ a minor to handle an alcoholic product.

(4) A beer wholesaler licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the beer wholesaling license to a person, whether for monetary gain or not, unless it is done:

- (a) in accordance with the commission rules; and
- (b) after written consent is given by the commission.

(5) A beer wholesaler licensee may not wholesale a beer manufactured within the state by a brewer who is not licensed by the commission as a brewery manufacturing licensee.

(6) A beer wholesaler licensee may not wholesale a beer manufactured out of state by a brewer who has not obtained a certificate of approval from the department.

(7) (a) A beer wholesaler licensee may not sell or distribute beer to a person within the state except to:

- (i) a retail licensee;
- (ii) an off-premise beer retailer; or
- (iii) an event permittee.

(b) A violation of this Subsection (7) is a class A misdemeanor.

(8) (a) A beer wholesaler licensee may not sell or distribute a beer to a person who sells the beer at retail outside of a sales territory designated on its application and authorized by an agreement described in Subsection 32B-13-202(8), except that if a beer wholesaler licensee is temporarily unable to supply a person within the beer wholesaler licensee's authorized sales territory, the department may grant temporary authority to another beer wholesaler licensee who distributes the same brand in another sales territory to supply:

- (i) a retail licensee; or
- (ii) an off-premise beer retailer.

(b) A violation of this Subsection (8) is a class B misdemeanor.

(9) (a) A beer wholesaler licensee shall own, lease, or otherwise control and maintain a warehouse facility located in this state for the receipt, storage, and further distribution of beer sold by the beer wholesaler licensee to a person within the state.

(b) A beer wholesaler licensee may not sell beer to a person in this state, other than the department, unless the beer is first:

- (i) physically removed from the vehicle used to transport the beer from the supplier to the beer wholesaler licensee; and
- (ii) delivered into the actual possession and control of the beer wholesaler licensee in its warehouse or other facility.

(10) A beer wholesaler licensee may not sell or distribute an alcoholic product that has not had its label and packaging approved by the department in accordance

with Chapter 1, Part 6, Malted Beverage Act.

(11) The commission may prescribe by policy or rule, consistent with this title, the general operational requirements of a beer wholesaling licensee relating to:

- (a) physical facilities; and
- (b) the conditions of importation, purchase, storage, sale, offering for sale, distribution, or transportation of beer within the state.

Amended by Chapter 334, 2011 General Session

32B-13-302. Notifying the department of a change of ownership.

The commission may suspend or revoke a beer wholesaling license if a beer wholesaler licensee does not immediately notify the department of change in:

- (1) ownership of the beer wholesaler licensee;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-14-101. Title -- Legislative intent.

- (1) This chapter is known as the "Utah Beer Industry Distribution Act."
- (2) (a) It is the policy of the Legislature to regulate and control the importation, sale, and distribution of beer within the state in the exercise of its powers under the Twenty-first Amendment to the Constitution of the United States and pursuant to the Utah Constitution.
- (b) In furtherance of the policy described in Subsection (2)(a), this chapter is enacted to:
 - (i) promote good faith and fair dealing in the business relationships between suppliers, wholesalers, and retailers of beer; and
 - (ii) provide for the establishment and maintenance of an orderly system for the distribution of beer in accordance with the laws of the state regulating the sale and distribution of beer to the public.

Enacted by Chapter 276, 2010 General Session

32B-14-102. Definitions.

As used in this chapter:

- (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship agreement that a terminating party seeks to terminate or not renew.
- (2) (a) "Distributorship agreement" means a written agreement between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in a designated geographical area any brand of beer

manufactured, imported, or distributed by the supplier.

(b) For purposes of this chapter, a separate agreement between a supplier and a wholesaler is considered to be part of a distributorship agreement if it relates to:

- (i) the relationship between the supplier and the wholesaler; or
- (ii) the duties of either the supplier or the wholesaler under a distributorship agreement.

(3) "Good cause" means the material failure by a supplier or a wholesaler to comply with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and an opportunity to correct in accordance with Part 2, Termination.

(4) "Good faith" is as defined in Subsection 70A-1a-201(2)(t).

(5) "Retailer" means a beer retailer.

(6) "Sales territory" means the geographic area of distribution and sale responsibility designated by a distributorship agreement.

(7) "Supplier," notwithstanding Section 32B-1-102, means a brewer or other person who sells beer to a wholesaler for resale in this state.

(8) "Terminating party" means a supplier or wholesaler who:

- (a) is a party to a distributorship agreement; and
- (b) seeks to terminate or not renew the distributorship agreement.

Enacted by Chapter 276, 2010 General Session

32B-14-103. Modifying statutory requirements not permitted.

(1) Nothing in this chapter is intended to restrict the right of a supplier to contractually require its wholesaler to comply with the supplier's operational standards of performance that are:

- (a) consistent with this chapter; and
- (b) uniformly established for its wholesalers according to the supplier's good faith business judgment.

(2) Notwithstanding Subsection (1), the requirements of this chapter may not be modified by agreement.

(3) An agreement that by its terms modifies the requirements of this chapter is void and unenforceable to the extent it attempts to modify the requirements of this chapter.

Enacted by Chapter 276, 2010 General Session

32B-14-201. Termination of distributorship agreements.

(1) Except as provided in Subsection (2) or (3), a supplier or wholesaler may not:

- (a) terminate a distributorship agreement; or
- (b) fail to renew a distributorship agreement.
- (2) A supplier or wholesaler may take an action prohibited by Subsection (1) if:
 - (a) the supplier or wholesaler has good cause for the action; and
 - (b) if notification is required by Section 32B-14-202:

- (i) the terminating party provides the affected party prior notification in accordance with Section 32B-14-202; and
 - (ii) the affected party has not eliminated the reasons specified in the notification as the reasons for the action within 90 days after the date the notification is mailed in accordance with Section 32B-14-202.
- (3) A supplier may take an action prohibited by Subsection (1) if:
- (a) the supplier gives the wholesaler 30 days written notice before termination or nonrenewal;
 - (b) the supplier discontinues production or discontinues distribution throughout the state of all brands of beer sold by the supplier to the wholesaler; and
 - (c) the termination or nonrenewal does not violate the distributorship agreement.

Enacted by Chapter 276, 2010 General Session

32B-14-202. Notice of termination.

(1) Except as provided in Subsection (3), a terminating party may not take an action described in Subsection 32B-14-201(1) unless the terminating party provides prior notification in accordance with Subsection (2) to the affected party.

(2) (a) A terminating party shall provide the notification required under Subsection (1):

- (i) in writing;
- (ii) by registered mail, return receipt requested; and
- (iii) to the affected party not less than 90 days before the date on which the distributorship agreement will be terminated or not renewed.

(b) A terminating party shall state in the notification required under Subsection (1):

- (i) the intention to terminate or not renew;
- (ii) the reasons for the termination or nonrenewal; and
- (iii) the date, not less than 90 days from the date of mailing, on which the termination or nonrenewal shall take effect if the reasons for the action are not eliminated by that date.

(3) A supplier or wholesaler may take an action described in Subsection 32B-14-201(1) without furnishing prior notification if:

- (a) the affected party is insolvent, bankrupt, in dissolution, or in liquidation;
- (b) the affected party makes an assignment for the benefit of creditors or similar disposition of substantially all of the assets of the affected party's business; or
- (c) the affected party or a person owning more than 10% of the stock or other ownership interest in the affected party:
 - (i) is convicted of, pleads guilty to, or pleads no contest to a felony under federal law or a law of this state that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party;
 - (ii) has its license or permit revoked or suspended for a period of 31 days or more; or
 - (iii) engages in intentional fraudulent conduct in its dealings with the terminating party that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party.

(4) Notwithstanding Subsection (3)(c)(i), a supplier may not take an action under Subsection (3)(c)(i) because of a conviction or plea by an owner of the affected party, if:

(a) any other approved owner of the affected party purchases the ownership interest of the offending owner;

(b) the offending owner was not materially involved in the management of the affected party; and

(c) the purchase described in Subsection (4)(a) is completed within 90 days after the conviction or plea.

(5) Subsection (3)(c)(iii) does not apply to conduct by a non-owner employee or representative of the affected party if the conduct occurred without the prior knowledge or consent of an owner of the affected party.

Enacted by Chapter 276, 2010 General Session

32B-14-301. Distributorship agreements in general.

A distributorship agreement may be for a definite or indefinite period.

Enacted by Chapter 276, 2010 General Session

32B-14-302. Prohibited conduct of supplier.

(1) A supplier may not:

(a) induce or coerce, or attempt to induce or coerce, a wholesaler to engage in an illegal act or course of conduct;

(b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the supplier on similarly situated wholesalers;

(c) prohibit a wholesaler from selling a product of another supplier;

(d) fix or maintain the price at which a wholesaler may resell beer;

(e) fail to execute with each wholesaler of its brands a written distributorship agreement;

(f) require a wholesaler to accept delivery of beer or any other item that is not voluntarily ordered by the wholesaler;

(g) restrict or inhibit, directly or indirectly, the right of a wholesaler to participate in an organization representing interests of wholesalers for a lawful purpose;

(h) require a wholesaler to participate in or contribute to a local, regional, or national advertising fund or other promotional activity that:

(i) is not used for an advertising or promotional activity in the wholesaler's sales territory; or

(ii) would require a contribution by the wholesaler in excess of the amounts specified in the distributorship agreement;

(i) retaliate against a wholesaler that files a complaint with the department or the applicable federal agency regarding an alleged violation by the supplier of a state or federal statute or administrative rule;

(j) require without good cause a change in the manager of a wholesaler who has previously been approved by the supplier;

(k) if a wholesaler changes its approved manager, prohibit the change unless

the new manager fails to meet the reasonable standards for similarly situated wholesalers of the supplier as stated in the distributorship agreement; or

(l) refuse to deliver a beer product covered by a distributorship agreement to the wholesaler:

- (i) in a reasonable quantity; and
- (ii) within a reasonable time after receipt of the wholesaler's order.

(2) Notwithstanding Subsection (1)(l), the supplier may refuse to deliver a beer product if the refusal is due to:

(a) the wholesaler's failure to pay the supplier pursuant to the distributorship agreement;

- (b) an unforeseeable event beyond the supplier's control;
- (c) a work stoppage or delay due to a strike or labor problem;
- (d) a bona fide shortage of materials; or
- (e) a freight embargo.

Enacted by Chapter 276, 2010 General Session

32B-14-303. Prohibited conduct of wholesaler.

(1) A wholesaler may not:

(a) induce or coerce, or attempt to induce or coerce, a retailer to engage in an illegal act or course of conduct;

(b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;

(c) prohibit a retailer from selling a product of another wholesaler;

(d) fix or maintain the price at which a retailer may resell beer;

(e) require a retailer to accept delivery of beer or any other item that is not voluntarily ordered by the retailer;

(f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an organization representing interests of retailers for a lawful purpose;

(g) require a retailer to participate in or contribute to a local, regional, or national advertising fund or other promotional activity;

(h) retaliate against a retailer that files a complaint with the department or the applicable federal agency regarding an alleged violation by the wholesaler of a state or federal statute or administrative rule; and

(i) refuse to deliver a beer product carried by the wholesaler to a properly licensed retailer who resides within the wholesaler's sales territory:

- (i) in a reasonable quantity; and
- (ii) within a reasonable time after receipt of the retailer's order.

(2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver a beer product if the refusal is due to:

(a) the retailer's failure to pay the wholesaler pursuant to Subsection 32B-4-704(6);

- (b) an unforeseeable event beyond the wholesaler's control;
- (c) a work stoppage or delay due to a strike or labor problem;
- (d) a bona fide shortage of materials; or

- (e) a freight embargo.

Enacted by Chapter 276, 2010 General Session

32B-14-304. Sale or transfer of business assets or ownership.

- (1) Without the prior written approval of a sale or transfer by the supplier:
 - (a) a wholesaler may not sell or transfer its business, or any portion of its business, including the distributorship agreement, to a successor in interest; and
 - (b) the owner of an interest in a wholesaler may not sell or transfer all or part of the owner's interest in the wholesaler to a successor in interest.
- (2) A supplier may not unreasonably withhold or delay its approval of a sale or transfer, including the wholesaler's rights and obligations under the terms of the distributorship agreement, if the person to be substituted meets reasonable standards that are imposed:
 - (a) by the supplier pursuant to the distributorship agreement; and
 - (b) on other wholesalers of that supplier of the same general class, taking into account the size and location of the sales territory and market to be served.
- (3) Notwithstanding Subsection (1), a wholesaler may not violate Subsection 32B-13-301(8).

Enacted by Chapter 276, 2010 General Session

32B-14-305. Sale or transfer of supplier's business.

- (1) (a) For purposes of this section, "successor" means a supplier who obtains a distribution right of a brand that a wholesaler distributes in this state pursuant to a distributorship agreement with another supplier who previously had the distribution rights of the brand.
- (b) For purposes of Subsection (1)(a), the successor may obtain a distribution right:
 - (i) by any means, including:
 - (A) merger;
 - (B) purchase of corporate shares; or
 - (C) purchase of assets; and
 - (ii) from:
 - (A) a supplier; or
 - (B) a person acting in an official capacity who is not a supplier including a nominee, representative, or fiduciary.
- (2) (a) A successor to a supplier that acquires a supplier's product or brand in this state is bound by the terms and conditions of each distributorship agreement with a wholesaler in this state that was in effect on the date on which the successor receives the assets or rights of the previous supplier.
- (b) Notwithstanding Subsection (2)(a), if the requirements of Subsection (2)(c) are met, a successor may contractually require the wholesaler to:
 - (i) execute a new distributorship agreement; and
 - (ii) comply with the successor's operational standards of performance.
- (c) A successor may impose a requirement under Subsection (2)(b) if:

- (i) the operational standards of performance being required are consistent with this chapter;
- (ii) the operational standards of performance being required are uniformly imposed by the successor on similarly situated wholesalers; and
- (iii) the successor provides the wholesaler at least one year to:
 - (A) execute a new distributorship agreement; and
 - (B) comply with the operational standards of performance.

Enacted by Chapter 276, 2010 General Session

32B-14-401. Reasonable compensation -- Arbitration.

(1) (a) If a supplier violates Section 32B-14-201 or 32B-14-304, the supplier is liable to the wholesaler for the sum of:

- (i) the laid-in cost of inventory of the affected brands; and
- (ii) any diminution in the fair market value of the wholesaler's business with relation to an affected brand.

(b) In determining fair market value, consideration shall be given to all elements of value, including good will and going concern value.

(2) (a) A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration.

(b) In the absence of an applicable arbitration provision in a distributorship agreement, either the supplier or the wholesaler may request arbitration if a supplier and a wholesaler are unable to mutually agree on:

- (i) whether good cause exists for termination or nonrenewal;
- (ii) whether the supplier unreasonably withheld approval of a sale or transfer under Section 32B-14-304; or
- (iii) the reasonable compensation to be paid for the value of the wholesaler's business in accordance with Subsection (1).

(c) If a supplier or wholesaler requests arbitration under Subsection (2)(b) and the other party agrees to submit the matter to arbitration, an arbitration panel shall be created with the following members:

- (i) one member selected by the supplier in a writing delivered to the wholesaler within 10 business days of the date arbitration was requested under Subsection (2)(b);
- (ii) one member selected by the wholesaler in a writing delivered to the supplier within 10 business days of the date arbitration was requested under Subsection (2)(b); and
- (iii) one member selected by the two arbitrators appointed under Subsections (2)(c)(i) and (ii).

(d) If the arbitrators fail to choose a third arbitrator under Subsection (2)(c)(iii) within 10 business days of the day on which the arbitrators under Subsections (2)(c)(i) and (ii) are selected, a judge of a district court in the county in which the wholesaler's principal place of business is located shall select the third arbitrator.

(e) Arbitration costs shall be divided equally between the wholesaler and the supplier.

(f) The award of the arbitration panel is binding on the parties unless appealed within 20 days from the date of the award.

(g) Subject to the requirements of this chapter, arbitration and a proceeding on appeal are governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

Enacted by Chapter 276, 2010 General Session

32B-14-402. Judicial remedies.

(1) A supplier or wholesaler who is a party to a distributorship agreement may maintain a civil action against the supplier or wholesaler in a court of competent jurisdiction in the county in which the wholesaler's principal place of business is located if:

- (a) the supplier or wholesaler violates this chapter; or
- (b) (i) the supplier and wholesaler are not able to mutually agree on reasonable compensation under Section 32B-14-401; and
- (ii) the parties do not agree to submit the matter to arbitration in accordance with Section 32B-14-401 before or within 20 days following service of process on the electing party in the civil action.

(2) (a) The prevailing party in an action under Subsection (1) shall recover:

- (i) actual damages, including the value of the wholesaler's business as specified in Section 32B-14-401 if applicable; and
- (ii) reasonable attorney fees and court costs.

(b) In addition to the amount awarded under Subsection (2)(a), the court may grant such relief in law or equity as the court determines to be necessary or appropriate considering the purposes of this chapter.

(3) If either party elects arbitration under Subsection (1)(b)(ii) following service of process, the civil action is stayed pending a decision by the arbitration panel.

Enacted by Chapter 276, 2010 General Session

32B-15-101. Title.

This chapter is known as the "Alcoholic Product Liability Act."

Enacted by Chapter 276, 2010 General Session

32B-15-102. Definitions.

As used in this chapter:

- (1) "Death of a third person" includes recovery for all damages, special and general, resulting from the death, except punitive damages.
- (2) (a) "Injury" includes injury in person, property, or means of support.
- (b) "Injury" also includes recovery for intangibles such as:
 - (i) mental and emotional injuries;
 - (ii) loss of affection; and
 - (iii) loss of companionship.

Enacted by Chapter 276, 2010 General Session

32B-15-201. Liability for injuries and damage resulting from distribution of

alcoholic products.

(1) (a) Except as provided in Subsections 32B-15-202(2) and (3), a person described in Subsection (1)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) a third person; or

(B) the heir, as defined in Section 78B-3-105, of that third person; or

(ii) the death of a third person.

(b) A person is liable under Subsection (1)(a) if:

(i) the person directly gives, sells, or otherwise provides an alcoholic product:

(A) to a person described in Subsection (1)(b)(ii); and

(B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product;

(ii) those actions cause the intoxication of:

(A) an individual under the age of 21 years;

(B) an individual who is apparently under the influence of intoxicating alcoholic products or drugs;

(C) an individual whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of intoxicating alcoholic products or drugs; or

(D) an individual who is a known interdicted person; and

(iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic product.

(2) (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) a third person; or

(B) the heir, as defined in Section 78B-3-105, of that third person; or

(ii) the death of the third person.

(b) A person is liable under Subsection (2)(a) if:

(i) that person directly gives or otherwise provides an alcoholic product to an individual who the person knows or should have known is under the age of 21 years;

(ii) those actions caused the intoxication of the individual provided the alcoholic product;

(iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic product; and

(iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic product as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product.

(3) This section does not apply to a business licensed in accordance with Chapter 7, Off-premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

Enacted by Chapter 276, 2010 General Session

32B-15-202. Liability for employees -- Employee protected in exercising judgment.

(1) (a) Except for a violation of Subsection 32B-15-201(2), an employer is liable for the actions of its staff in violation of this chapter.

(b) This Subsection (1) does not apply to a business licensed in accordance with Chapter 7, Off-premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

(2) An employer may not sanction or terminate the employment of individual staff of a retail licensee or other establishment serving an alcoholic product as a result of the staff having exercised the staff's independent judgment to refuse to sell an alcoholic product to a person the staff considers to meet one or more of the conditions described in Subsection 32B-15-201(1)(b).

(3) An employer who terminates an employee or imposes sanctions on the employee contrary to this section is considered to have discriminated against that employee and is subject to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

Enacted by Chapter 276, 2010 General Session

32B-15-203. Governmental immunity.

This title does not create civil liability on the part of the following arising out of one of the following's actions in regulating, controlling, authorizing, or otherwise being involved in the sale or other distribution of an alcoholic product:

- (1) the state;
- (2) a state agency;
- (3) a state employee;
- (4) the commission;
- (5) the department; or
- (6) a political subdivision.

Enacted by Chapter 276, 2010 General Session

32B-15-301. Cause of action -- Statute of limitations.

(1) (a) A person who suffers an injury under Subsection 32B-15-201 has a cause of action against the person who provided the alcoholic product in violation of Section 32B-15-201.

(b) If a person having rights or liabilities under this chapter dies, the rights or liabilities provided by this chapter survive to or against that person's estate.

(2) The total amount that may be awarded to any person pursuant to a cause of action for injury and damage under this chapter that arises after January 1, 2010, is limited to \$1,000,000 and the aggregate amount which may be awarded to all persons injured as a result of one occurrence is limited to \$2,000,000.

(3) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.

(4) (a) Nothing in this chapter precludes any cause of action or additional recovery against the person causing the injury.

(b) A cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the

damage cap in Subsection (2).

(c) A cause of action brought under this chapter is exempt from Sections 78B-5-817 through 78B-5-823.

(5) This section does not apply to a business licensed in accordance with Chapter 7, Off-premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

Enacted by Chapter 276, 2010 General Session

32B-15-302. Action for contribution by provider of an alcoholic product.

(1) (a) Except as provided in Subsections (2) and (3), a person, as defined under Section 32B-15-201 or Subsection 32B-15-202(1), against whom an award is made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.

(b) The maximum amount for which a person causing the injury and damage may be liable to a person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.

(2) This action for contribution under this section may not be brought against:

(a) a person entitled to recovery as described in Subsection 32B-15-201(1)(a)(i) or (ii); or

(b) a person entitled to recover as described in Subsection 32B-15-201(2)(a)(i) or (ii).

(3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to a person entitled to recover as described in Subsection 32B-15-201(1)(a)(i) or (ii) or 32B-15-201(2)(a)(i) or (ii):

(a) in a cause of action brought under this chapter; or

(b) in a separate cause of action for injury and damage that is not brought under this chapter.

Enacted by Chapter 276, 2010 General Session

32B-16-101. Title.

This chapter is known as the "Minor Liability Act."

Enacted by Chapter 276, 2010 General Session

32B-16-102. Definitions.

As used in this chapter:

(1) "Applicable fine" means the sum of the following imposed or assessed under this title by the commission for a violation related to a minor:

(a) a fine; and

(b) administrative costs of a disciplinary proceeding.

(2) "Violation related to a minor" means a violation under this title:

(a) that is, in whole or in part, based on a retail licensee, or staff of the retail licensee:

- (i) selling, offering for sale, or furnishing an alcoholic product to a minor;
- (ii) purchasing or otherwise obtaining an alcoholic product for a minor;
- (iii) permitting a minor to consume an alcoholic product;
- (iv) permitting a minor to gain admittance to an area into which a minor is not permitted under this title; or
- (v) offering or providing employment to a minor that under this title may not be obtained by a minor; and
- (b) if as part of the violation the minor uses proof of age in violation of Chapter 1, Part 4, Proof of Age Act.

Enacted by Chapter 276, 2010 General Session

32B-16-201. Liability related to applicable fine.

(1) A minor is liable to a retail licensee in an amount described in Subsection (2) if:

(a) the commission imposes an applicable fine against the retail licensee on the basis of a violation related to a minor; and

(b) the minor, as part of the minor's involvement in the violation described in Subsection (1)(a), uses proof of age in violation of Chapter 1, Part 4, Proof of Age Act.

(2) If the conditions of Subsection (1) are met, a minor is liable to a retail licensee for an amount equal to the sum of:

(a) one-half of the amount of the applicable fine imposed against the retail licensee; and

(b) the costs and attorney fees incurred by the retail licensee under Section 32B-16-301 to collect the amount owed under this section.

Enacted by Chapter 276, 2010 General Session

32B-16-301. Bringing an action.

(1) Subject to the other provisions of this section, a retail licensee to whom a minor is liable under Section 32B-16-201 may bring an action in a court of competent jurisdiction to collect the amount described in Section 32B-16-201.

(2) The action allowed under this section may be brought against:

(a) the minor; or

(b) if the minor is less than 18 years of age, a parent or guardian of the minor.

(3) An action under this chapter may not be commenced more than two years after the day on which the applicable fine is imposed by the commission.

(4) Nothing in this chapter precludes a cause of action or additional recovery against a minor under law other than this chapter.

(5) Notwithstanding the other provisions of this part:

(a) the state or an agency of the state is not liable under this part when a state agency has legal or protective custody of, or has guardianship of a minor at the time:

(i) the minor engages in conduct with regard to a violation related to a minor; or

(ii) an applicable fine is imposed on the retail licensee by the commission; and

(b) a retail licensee may not bring an action against the state or an agency of the state under the circumstances described in Subsection (5)(a).

Enacted by Chapter 276, 2010 General Session

32B-16-302. Action for contribution.

(1) (a) Subject to Subsections (2) and (3), a minor liable under Section 32B-16-201 against whom an award is made under this chapter, may bring a separate cause of action for contribution against a person causing the liability under Section 32B-16-201.

(b) The maximum amount for which a person described in Subsection (1)(a) may be liable to a minor seeking contribution is that percentage or proportion of the amount described in Section 32B-16-201 equivalent to the percentage or proportion of fault attributed to that person causing the liability under Section 32B-16-201.

(2) An action for contribution under this section may not be brought against:

(a) the retail licensee to whom the minor is liable; or

(b) staff of the retail licensee.

(3) An action for contribution under this section may not diminish the amount collected by a retail licensee under this chapter.

Enacted by Chapter 276, 2010 General Session